

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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ARENDI USA, INC., ET AL. \* C.A. 02-343T

VS. \* 10:00 A.M.

\* SEPTEMBER 23, 2004

MICROSOFT CORPORATION, ET AL. \*

\* PROVIDENCE, RI

\* \* \* \* \*

BEFORE THE HONORABLE ERNEST C. TORRES

CHIEF DISTRICT JUDGE

(JURY TRIAL)

APPEARANCES:

FOR ARENDI U.S.A. INC:

MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY & POPEO, PC  
BY: PAUL J. HAYES, ESQUIRE  
BY: EUGENE A. FEHER, ESQUIRE  
ONE FINANCIAL CENTER  
BOSTON, MA 02111

TAYLOR, DUANE, BARTON & GILMAN,  
LLP  
BY: SHERI L. PIZZI, ESQUIRE  
10 DORRANCE STREET - SUITE 700  
PROVIDENCE, RI 02903

1 FOR MICROSOFT CORPORATION:

2 FISH & RICHARDSON, P.C.  
3 BY: FRANK E. SCHERKENBACH, ESQ.  
4 BY: CRAIG R. SMITH, ESQUIRE  
225 FRANKLIN STREET  
BOSTON, MA 02110-2804

5 FISH & RICHARDSON, P.C.  
6 BY: JENNIFER K. BUSH, ESQUIRE  
12390 EL CAMINO REAL  
7 SAN DIEGO, CA 02130

8 EDWARDS & ANGELL  
9 BY: PATRICIA SULLIVAN, ESQUIRE  
2800 FINANCIAL PLAZA  
10 PROVIDENCE, RI 02903

11 ISABELLA FU, ESQUIRE  
12 MICROSOFT IN-HOUSE COUNSEL

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COURT REPORTER:

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ANGELA M. GALLOGLY, RPR  
ONE EXCHANGE TERRACE  
PROVIDENCE, RI 02903

1 I N D E X

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3 DEFENDANT'S WITNESS PAGE

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DR. BRUCE CROFT

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CONT. CROSS-EXAMINATION BY MR. HAYES

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11 DIRECT EXAMINATION BY MR. FEHER 79  
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15 PLAINTIFF'S FOR ID IN FULL

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17 93 6

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1       SEPTEMBER 23, 2004 - 10:00 A.M.

2               THE COURT:   GOOD MORNING.

3               WOULD YOU BRING THE JURY IN, PLEASE.

4               DR. CROFT, WOULD YOU RETURN TO THE STAND,  
5       PLEASE.

6               (JURY PRESENT)

7               THE COURT:   PLEASE BE SEATED, LADIES AND  
8       GENTLEMEN AND GOOD MORNING.

9               MR. HAYES:   MAY I PROCEED, JUDGE.

10              THE COURT:   YOU MAY.

11              MR. HAYES:   THANK YOU.

12              DEFENDANT'S WITNESS, DR. BRUCE CROFT, RESUMES

13                           CONTINUED CROSS-EXAMINATION

14       BY MR. HAYES:

15              MR. HAYES:   MAY I APPROACH?

16              THE COURT:   YES.

17       Q.   MR. CROFT, I'M JUST GOING TO GIVE YOU YOUR  
18       DEPOSITION TRANSCRIPTS AGAIN.   GOOD MORNING, SIR.

19       A.   GOOD MORNING.

20       Q.   I THINK WHERE WE LEFT OFF LAST TIME, I WOULD LIKE  
21       TO MOVE ON FROM YOUR COMPENSATION, AND LET ME ASK YOU  
22       THIS.   YOU SUBMITTED AN EXPERT REPORT ON INFRINGEMENT  
23       IN THE CASE; CORRECT?

24       A.   THAT'S CORRECT.

25       Q.   AND THAT WAS SUBMITTED BY YOU AS A PURPORTED

1 INDEPENDENT REPORT; TRUE?

2 A. THAT'S TRUE.

3 Q. AND LET ME SHOW YOU A COPY OF THIS -- IF I MAY,  
4 JUDGE.

5 THE COURT: CAN YOU PUT IT ON THE ELMO.

6 MR. HAYES: NO, IT'S -- I'M NOT GOING TO MARK IT  
7 AS AN EXHIBIT.

8 THE COURT: ALL RIGHT.

9 Q. SIR, THAT'S YOUR EXPERT REPORT; CORRECT, ON  
10 INFRINGEMENT?

11 A. YES, IT IS.

12 Q. AND THAT WAS SIGNED BY YOU ON OR ABOUT MARCH 31,  
13 '04; CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND YOU DIDN'T COMMIT YOURSELF TO A POSITION ON  
16 INFRINGEMENT UNTIL YOU PUT YOUR JOHN HANCOCK ON THAT  
17 REPORT; CORRECT?

18 A. THAT'S CORRECT.

19 Q. NOW, YOU WERE FIRST RETAINED BY MICROSOFT'S LAWYERS  
20 IN OCTOBER, CORRECT, '03?

21 A. I CAN'T RECALL EXACTLY THE MONTH, BUT THAT SOUNDS  
22 ABOUT RIGHT.

23 Q. BUT IN ANY EVENT, THERE WAS AT LEAST A FEW MONTHS  
24 PRIOR TO YOUR INDEPENDENT EXPERT REPORT; CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT  
2 93.

3 MR. HAYES: WE HAVE RUN OUT OF ROOM UP HERE,  
4 JUDGE.

5 (EXHIBIT HANDED TO WITNESS)

6 Q. EXHIBIT 93, SIR, THOSE ARE YOUR BILLS FOR SERVICES  
7 RENDERED IN THIS CASE; IS THAT CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND THEY ACCURATELY REFLECT WHAT YOU DID OR DIDN'T  
10 DO PRIOR TO THAT EXPERT REPORT; CORRECT?

11 A. YES, THAT'S CORRECT.

12 MR. HAYES: WE WOULD OFFER EXHIBIT 93, YOUR  
13 HONOR.

14 MR. SCHERKENBACH: NO OBJECTION.

15 THE COURT: 93 MAY BE ADMITTED AS A FULL  
16 EXHIBIT.

17 (PLAINTIFF'S EXHIBIT 93 ADMITTED IN FULL)

18 Q. NOW, SIR, IF YOU WOULD TURN, IF YOU WILL, TO BATES  
19 NUMBER, I BELIEVE IT'S 126459. IT'S A COUPLE OF PAGES  
20 INTO YOUR REPORT.

21 A. I HAVE IT.

22 MR. HAYES: AND IF I COULD PUBLISH THIS TO THE  
23 JURY, JUDGE, GIVEN THAT IT'S IN. EVERYBODY GOT IT?

24 Q. AND AS WE CAN SEE, YOU MET WITH MICROSOFT'S TRIAL  
25 LAWYERS ON JANUARY '04 FOR ABOUT FOUR HOURS; CORRECT?

1 THE TOP ENTRY.

2 A. YES, THAT'S CORRECT.

3 Q. AND YOU ALSO MET WITH THEM IN THAT -- AND THAT

4 MEETING OCCURRED, I THINK, AS IT INDICATES HERE, AT

5 AMHERST; CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND THEN ON 2/17/04 YOU MET WITH THEM FOR TEN HOURS

8 IN BOSTON; CORRECT?

9 A. YES, I DID.

10 Q. SO PRIOR TO PUTTING YOUR JOHN HANCOCK ON THAT

11 REPORT, YOU MET WITH MICROSOFT'S TRIAL LAWYERS FOR

12 APPROXIMATELY 14 HOURS; CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND THE MEETING -- EXCUSE ME. AND WHO WERE THESE

15 LAWYERS THAT YOU MET WITH?

16 A. WHICH MEETING ARE YOU TALKING ABOUT?

17 Q. WHAT?

18 A. WHICH MEETING ARE YOU REFERRING TO?

19 Q. LET'S TAKE THE TEN-HOUR MEETING, THAT'S AN EASY

20 ONE.

21 A. OKAY, I BELIEVE THAT THE PEOPLE AT THAT MEETING --

22 DO YOU WANT NAMES OF PEOPLE THERE?

23 Q. THAT'S THE QUESTION.

24 A. OKAY, I THINK CERTAINLY CRAIG SMITH WAS THERE, I

25 BELIEVE PETER KIRK WAS THERE, AND I THINK FRANK

1 SCHERKENBACH WAS THERE FOR PART OF THE TIME.

2 Q. AND THAT MEETING WAS AT THE LAWYERS' OFFICE;

3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND ALL THREE OF THESE MICROSOFT TRIAL LAWYERS GAVE

6 YOU THEIR VIEWS ON THE ISSUES OF INFRINGEMENT; CORRECT?

7 A. THAT'S NOT CORRECT, NO.

8 Q. IT ISN'T. WILL YOU TURN, IF YOU WILL, I BELIEVE TO

9 PAGE 55 OF YOUR DEPOSITION. AND ON LINE 11 IT SAYS,

10 "WELL, AT THAT MEETING THAT YOU REFERRED TO, THERE WERE

11 LAWYERS THAT I MENTIONED, SCHERKENBACH, SMITH AND KIRK

12 WERE ALL THERE AND COMMENTS WERE MADE BY ALL THREE AT

13 SOME POINT OR ANOTHER."

14 DO YOU SEE THAT?

15 A. YES, I SEE THAT.

16 Q. WELL, OBVIOUSLY, AT THAT MEETING YOU'RE TALKING

17 ABOUT INFRINGEMENT; CORRECT?

18 A. YES, I BELIEVE WE WERE. WE WERE DISCUSSING MY

19 DRAFT REPORT.

20 Q. AND, IN FACT, SIR, YOU REVISED YOUR ANALYSIS BASED

21 ON WHAT THE LAWYERS TOLD YOU; ISN'T THAT TRUE?

22 A. I REVISED SOME OF THE PRESENTATION, BUT NONE OF THE

23 ARGUMENTS.

24 Q. EXCUSE ME. YOU REVISED YOUR ANALYSIS BASED ON WHAT

25 THE LAWYERS TOLD YOU; RIGHT?



1 A. NO, THAT'S NOT TRUE.

2 Q. YOU MADE NO REVISIONS BASED ON WHAT THESE LAWYERS  
3 TOLD YOU?

4 A. THEY POINTED OUT THAT IN SOME CASES THE  
5 PRESENTATION OF MY ARGUMENTS WERE WEAK, AND SO I WENT  
6 BACK AND THOUGHT THE ARGUMENTS THROUGH AGAIN AND REDID  
7 THEM, SO IT WAS A PRESENTATION ISSUE.

8 Q. DID THEY TELL YOU WHY THE ARGUMENTS WERE WEAK?

9 A. I DON'T BELIEVE THEY DID. I THINK -- I WAS  
10 PRESENTING MY VIEWS OF INFRINGEMENT AND THEY WERE  
11 COMMENTING ON WHERE THEY THOUGHT THE PRESENTATION WAS  
12 WEAK, BECAUSE I HAVEN'T WRITTEN VERY MANY OF THESE  
13 BEFORE.

14 Q. SO IF THEY'RE COMMENTING ON WHERE THE PRESENTATION  
15 IS WEAK, THEY'RE TELLING YOU WHERE YOUR ARGUMENTS WERE  
16 WEAK; TRUE?

17 A. THAT'S TRUE, BUT THEY'RE NOT TELLING ME WHAT TO  
18 WRITE ABOUT THE ARGUMENTS.

19 Q. OH, OKAY. WELL, DO YOU BELIEVE THAT IT'S JUST MERE  
20 COINCIDENCE THAT YOUR INDEPENDENT REPORT JUST HAPPENS  
21 TO MIRROR THE OPINIONS OF THE LAWYERS AS TO WHY THINGS  
22 DON'T INFRINGE HERE? IS THAT JUST MERE COINCIDENCE?

23 MR. SCHERKENBACH: OBJECTION, ARGUMENTATIVE AND  
24 LACKS FOUNDATION.

25 THE COURT: SUSTAINED.

1 Q. BUT IN ANY EVENT, YOU DID NOT COMMIT YOURSELF TO  
2 THIS INDEPENDENT REPORT UNTIL AFTER THOSE MEETINGS;  
3 CORRECT?

4 A. THERE WAS -- I MADE A NUMBER OF REVISIONS TO THE  
5 REPORT AFTER THOSE MEETING, THAT'S CORRECT.

6 Q. NOW, LET'S TALK ABOUT THE ISSUE OF INFRINGEMENT,  
7 WHICH WE ARE ALL HERE FOR.

8 IS IT CORRECT THAT PRIOR TO MARCH 31, WHEN YOU  
9 EXECUTED YOUR REPORT, YOU NEVER DISCUSSED THE  
10 OPERATIONS OF SMART TAGS WITH THE -- ONE OF THE  
11 INVENTORS, MR. REYNAR?

12 A. I NEVER DISCUSSED SMART TAGS WITH MR. REYNAR PRIOR  
13 TO THAT DATE.

14 Q. IT'S ALSO TRUE THAT PRIOR TO YOUR REPORT OF MARCH  
15 31, YOU NEVER DISCUSSED ANYTHING WITH MR. YODER;  
16 CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND, IN FACT, PRIOR TO ISSUING THIS REPORT, YOU  
19 NEVER REVIEWED THE DEPOSITION TESTIMONY OF MR. YODER ON  
20 HOW SMART TAGS WORKED, PRIOR TO YOUR REPORT; CORRECT?

21 A. I DID NOT REVIEW THAT DEPOSITION, NO.

22 Q. OKAY. NOW, LET'S LOOK AT THE CLAIMS, AND  
23 PARTICULARLY, IF I WILL, LOOK AT CLAIM 16. DO YOU HAVE  
24 THAT?

25 A. YES, I DO.

1 Q. AND I THINK WE HAVE THAT ON THE ELMO. NOW, CLAIM  
2 16, IF WE LOOK AT IT -- OH, I'M SORRY.

3 YOUR HONOR, CAN YOU PUBLISH THAT TO THE JURY?  
4 IT'S IN. THANK YOU.

5 CLAIM 16 CALLS FOR "A STORAGE MEDIUM STORING A  
6 PROGRAM FOR PERFORMING THE STEPS OF," ETC., DO YOU SEE  
7 THAT?

8 A. YES, I SEE THAT.

9 Q. AND OFFICE XP IS A STORAGE MEDIUM; CORRECT?

10 A. THE CDS ON WHICH THEY ARE SOLD IS A STORAGE MEDIUM,  
11 THAT'S CORRECT.

12 Q. RIGHT. AND WHAT THEY STORE IS THE PROGRAM, ALL  
13 THIS SOFTWARE AND WHATEVER IN IT?

14 A. THAT'S CORRECT.

15 Q. INCLUDING SMART TAGS?

16 A. YES.

17 Q. THANK YOU. SO THAT LANGUAGE, "A STORAGE MEDIUM,"  
18 LITERALLY READS WORD-FOR-WORD ON THE ACCUSED OFFICE XP  
19 PRODUCT; CORRECT?

20 A. THAT ONE LIMITATION OF THE CLAIM, I BELIEVE, READS  
21 ON THE PRODUCT, YES.

22 Q. WELL, WE'RE GOING TO TAKE THEM ONE AT A TIME,  
23 THAT'S THE POINT. AND THEN IT SAYS, PROVIDING THE  
24 STEPS OF, AND THOSE ARE THE STEPS THAT FOLLOW THE TERM  
25 "COMPRISING" IN CLAIM 1; CORRECT?

1 A. THIS IS NOT THE WAY THE CLAIM IS EXACTLY WRITTEN.

2 THIS IS YOUR OWN VERSION OF THE CLAIM LANGUAGE.

3 Q. WELL, LET'S LOOK AT THAT FOR A MOMENT, SIR, LOOK AT

4 CLAIM 16 AS WRITTEN. IT SAYS, "A STORAGE MEDIUM FOR

5 STORING A PROGRAM OF -- FOR PROVIDING THE STEPS IN ONE

6 OF THE CLAIMS 1 TO 14. CORRECT?

7 A. THAT'S CORRECT. AND ALL 14 OF THOSE CLAIMS INCLUDE

8 ALL THE LIMITATIONS OF CLAIM 1?

9 Q. RIGHT. IT SAYS "PERFORMING THE STEPS"; IS THAT

10 CORRECT?

11 A. YES, IT DOES SAY THAT.

12 Q. OKAY. AND, SIR, IF WE LOOK BACK AT CLAIM 1, WE'VE

13 GOT IT RIGHT HERE, THE STEPS START AFTER THE WORD

14 "COMPRISING"; CORRECT?

15 A. IT DOESN'T USE THE WORD STEPS, BUT THEY ARE THE

16 STEPS THAT ARE EXECUTED AFTER THE SINGLE ENTRY OF THE

17 EXECUTE COMMAND, BUT I WOULD INCLUDE THE SINGLE ENTRY

18 OF THE EXECUTE COMMAND AS ONE OF THE STEPS.

19 Q. BUT IT WOULD BE FAIR TO SAY THAT THE PREAMBLE IS

20 NOT A STEP, IT'S JUST THE PREAMBLE; CORRECT?

21 MR. SCHERKENBACH: OBJECTION, THAT CALLS FOR A

22 LEGAL CONCLUSION.

23 THE COURT: OVERRULED. AGAIN, LADIES AND

24 GENTLEMEN, I'M GOING TO GIVE SOME LATITUDE HERE, BUT

25 REMEMBER THAT AS FAR AS THE LAW IS CONCERNED, THAT I'LL

1 EXPLAIN WHAT THE LAW IS TO YOU.

2 YOU MAY ANSWER THE QUESTION.

3 A. I'M NOT PRECISELY SURE, THIS IS A DEPENDENT CLAIM  
4 DEPENDING ON CLAIM 1. CLAIM 1 INCLUDES ALL THIS  
5 LANGUAGE AND I WOULD IMAGINE IT DOES INCLUDE THE  
6 PREAMBLE AS WELL.

7 Q. YOU SAY YOU IMAGINE. IT DOESN'T SAY A PROGRAM FOR  
8 PERFORMING THE PREAMBLE AND THE STEPS, IT SAYS THE  
9 STEPS; CORRECT? THAT'S WHAT IT SAYS.

10 A. IT DOESN'T SAY -- IT DOESN'T REFER TO THE PREAMBLE,  
11 NO.

12 Q. AND YOU TALKED ABOUT THIS BEING A DEPENDENT CLAIM.  
13 CLAIM 16 IS A STANDARD APPARATUS CLAIM IN COMPUTERESE;  
14 CORRECT?

15 MR. SCHERKENBACH: SAME OBJECTION, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 Q. NOW, SIR, IF WE LOOK AT THE CLAIM LANGUAGE, LET'S  
18 JUST LOOK AT CLAIM 1, AND LET'S TAKE, IF WE WILL --  
19 NOW, YOU'VE TESTIFIED ABOUT INFRINGEMENT HERE AND SO  
20 PRESUMABLY YOU KNOW THE GROUND RULES AS TO HOW  
21 INFRINGEMENT IS DETERMINED?

22 A. I BELIEVE SO, YES.

23 Q. AND INFRINGEMENT IS NOT DETERMINED BY COMPARING THE  
24 COMMERCIAL EMBODIMENT OF THE INVENTION TO THE ACCUSED  
25 PRODUCT, CORRECT?

1 A. IT'S NOT DETERMINED BY -- IT'S CERTAINLY NOT  
2 DETERMINED BY LOOKING AT ANY PARTICULAR EXAMPLE AS YOU  
3 KEPT -- OF THE PATENT, WHICH IS WHAT YOU KEPT REFERRING  
4 TO.

5 Q. BUT IN YOUR DIRECT TESTIMONY, I BELIEVE YOU  
6 REFERRED TO EXHIBIT A IN THE PATENT; CORRECT?

7 A. I CAN'T RECALL WHAT EXHIBIT A IS IN THE PATENT.

8 Q. EXCUSE ME, FIG. 1-A. DO YOU HAVE THE PATENT IN  
9 FRONT OF YOU, SIR?

10 A. FIGURE 1-A I DO RECALL.

11 Q. YEAH. AND YOU UNDERSTAND THAT INFRINGEMENT IS NOT  
12 DETERMINED BY COMPARING THE PREFERRED EMBODIMENT SHOWN  
13 IN THE PATENT TO THE ACCUSED PRODUCT?

14 A. YES, I UNDERSTAND THAT.

15 Q. SO WHY DON'T WE LOOK AT THE CLAIM AS WRITTEN. AND  
16 FIRST OF ALL, YOU'LL AGREE WITH ME THAT THE CLAIM  
17 LANGUAGE, WE'RE LOOKING NOW AT CLAIM 1, DOES EVERYBODY  
18 HAVE THAT UP ON THE SCREEN -- GOOD.

19 CLAIM 1, YOU'LL AGREE WITH ME ON ITS FACE IS NOT  
20 AMBIGUOUS, THE LANGUAGE THERE, CORRECT?

21 A. NO, I WOULDN'T AGREE WITH THAT ENTIRELY, NO.

22 Q. YOU SAY NOT ENTIRELY. WELL, CAN YOU TURN TO PAGE  
23 59 OF YOUR DEPOSITION.

24 A. YES, I HAVE IT.

25 Q. AND ON LINE 12 -- YOU UNDERSTOOD WHEN YOU TOOK THIS

1 DEPOSITION, YOU WERE UNDER OATH, RIGHT?

2 A. YES, I DID.

3 Q. AND YOU SAID IN THIS, FOR THIS CLAIM 1, "I DON'T  
4 THINK I SAID THAT ANYTHING HERE WAS AMBIGUOUS. I DID  
5 POINT OUT THAT THERE'S A LITTLE DEFINITION OF ANALYSIS  
6 IN THE PATENT FOR THE CLAIM, BUT I DON'T THINK I USED  
7 THE TERM 'AMBIGUOUS' FOR ANYTHING."

8 NOW, THAT WAS YOUR TESTIMONY THAT YOU PROVIDED  
9 UNDER OATH ON JUNE 15, 2004; CORRECT?

10 A. YES. I DIDN'T USE THE TERM "AMBIGUOUS" IN MY  
11 REPORT, WHICH IS WHAT I WAS SAYING THERE.

12 Q. NOW, YOU'LL UNDERSTAND HERE THAT THE ACCUSED  
13 PRODUCT IS OFFICE XP, OFFICE 2000 -- WHAT IS IT,  
14 2003 -- AND THE OTHER PRODUCTS THAT CONTAIN THE SMART  
15 TAG TECHNOLOGY; CORRECT?

16 A. YES, I DO.

17 Q. AND YOU UNDERSTAND WHAT THE SUBJECT, THE SMART TAGS  
18 AT ISSUE HERE, ARE THE OUT-OF-THE-BOX SMART TAGS AND  
19 THE CUSTOM SMART TAGS; CORRECT?

20 A. YES, I DO UNDERSTAND THAT.

21 Q. AND I THINK I HEARD YOU TELL THE JURY THAT WITH  
22 CUSTOM SMART TAGS EVERY ONE IS DIFFERENT?

23 A. YES, I SAID SOMETHING LIKE THAT, YEAH.

24 Q. THE FACT IS, THE TECHNOLOGY TO CREATE THE SMART  
25 TAGS IS, IN THESE CUSTOMIZABLE SMART TAGS, IS IN OFFICE

1 XP; TRUE?

2 A. THE INTERFACES THAT ENABLE YOU TO HOOK UP THE,  
3 WHATEVER PROGRAM YOU WRITE, TO IMPLEMENT THE  
4 RECOGNIZERS AND ACTIONS IS IN THE PRODUCTS, THAT'S  
5 CORRECT, BUT YOU CAN WRITE ANY PROGRAM YOU LIKE TO HOOK  
6 INTO IT.

7 Q. AND, SIR, LET ME SHOW YOU, IF I WILL, IF I TAKE  
8 THIS OFF FOR A SECOND --

9 MR. HAYES: JUDGE, I THINK YOU'RE GOING TO HAVE  
10 TO POP IT OUT OF THE JURY, BECAUSE THIS IS SINOFSKY'S  
11 DEPOSITION?

12 THE COURT: YOU HAVE TO POP IT OUT OF THE JURY,  
13 YOU MEAN NOT DISPLAY THIS TO THE JURY?

14 MR. HAYES: RIGHT. AND YOU CAN DO THAT UPON AN  
15 EXECUTE OF A SINGLE EXECUTE COMMAND, IF YOU SO CHOOSE.

16 Q. DO YOU HAVE THAT IN FRONT OF YOU, SIR?

17 A. YES, I DO.

18 Q. AND MR. SINOFSKY TESTIFIED THAT THE TECHNIQUES FOR  
19 INCORPORATING SMART TAGS INTO OFFICE ARE THE SAME  
20 REGARDLESS OF DIFFERENT TYPES OF SMART TAGS. NOW, DO  
21 YOU AGREE WITH MR. SINOFSKY, WHO HAS BEEN CHARACTERIZED  
22 HERE AS "MR. OFFICE"?

23 A. I ALREADY SAID THAT I -- THAT THE INTERFACES THAT  
24 ENABLE YOU TO HOOK INTO WHATEVER PROGRAM YOU WRITE FOR  
25 RECOGNIZERS AND ACTIONS, THOSE INTERFACES ARE IN THE



1 PRODUCTS.

2 Q. THE QUESTION IS, DO YOU AGREE WITH THE SAME THAT I  
3 JUST READ FROM MR. SINOFSKY'S DEPOSITION, YES OR NO?

4 A. YES, THIS IS AN ALTERNATIVE WAY OF SAYING WHAT I  
5 SAID.

6 Q. AND HE ALSO SAID, THE RUN TIME OR THE ABILITY TO  
7 HOST THOSE CUSTOM DEVELOPED SMART TAGS IS SHIPPED AS  
8 PART OF OFFICE XP. DO YOU AGREE WITH THAT STATEMENT,  
9 SIR?

10 A. THE ABILITY TO HOOK IN A SMART TAG DLL IS CERTAINLY  
11 PART OF THE OFFICE ENVIRONMENT, YES.

12 Q. SO WHAT'S THE ANSWER? DO YOU AGREE WITH THE  
13 STATEMENT IS THE QUESTION, SIR.

14 A. I'M AGREEING WITH IT AND RESTATING IT, YES.

15 Q. OKAY, THANK YOU. NOW, OFFICE XP -- I THINK I'VE  
16 ALREADY ASKED YOU THIS SO WE CAN MOVE ON. LET ME GET  
17 BACK TO CLAIM 1 HERE.

18 IF WE LOOK AT CLAIM 1, AND LET'S JUST START AT  
19 THE PREAMBLE. CAN I PUBLISH THIS TO THE JURY, JUDGE?

20 THE COURT: YES.

21 Q. LOOK AT THE PREAMBLE AND IT CALLS FOR A  
22 COMPUTERIZED METHOD FOR INFORMATION HANDLING WITHIN A  
23 DOCUMENT CREATED USING AN APPLICATION PROGRAM, THE  
24 DOCUMENT INCLUDING FIRST INFORMATION, ETC.

25 DO YOU SEE THAT?

1 A. YES.

2 Q. SMART TAGS IS A COMPUTERIZED METHOD FOR INFORMATION  
3 HANDLING WITHIN A DOCUMENT CREATED USING AN APPLICATION  
4 PROGRAM; ISN'T THAT TRUE?

5 A. I WOULD AGREE WITH THAT. YES, I WOULD AGREE.

6 Q. AND THEN IT GOES ON IN THE PREAMBLE AND IT SAYS,  
7 "THE DOCUMENT INCLUDING FIRST INFORMATION PROVIDED  
8 THEREIN." DO YOU SEE THAT?

9 A. I SEE THAT.

10 Q. AND IN SMART TAGS THE DOCUMENT INCLUDES FIRST  
11 INFORMATION IN THE CONTEXT OF THIS CLAIM; CORRECT?

12 A. THE -- AS I'VE DISCUSSED MANY TIMES, WHEN THE  
13 INFORMATION THAT'S RECOGNIZED AS THE USER TYPES IN, IS  
14 RECOGNIZED BEFORE ANY SINGLE -- BEFORE ANY SINGLE ENTRY  
15 OF THE EXECUTE COMMAND, SO LITERALLY IT CAN'T BE FIRST  
16 INFORMATION --

17 Q. EXCUSE ME.

18 THE COURT: FINISH YOUR ANSWER.

19 Q. GO AHEAD, I'M SORRY.

20 A. -- BUT YOU COULD, I KNOW THAT YOUR EXPERT, FOR  
21 EXAMPLE, HAS REFERRED TO IT AS FIRST INFORMATION.

22 Q. THE BOTTOM LINE, SIR, IS THAT THE PREAMBLE READS  
23 WORD-FOR-WORD ON THE ACCUSED PRODUCT; ISN'T THAT TRUE?  
24 I'M GOING THROUGH THESE ONE AT A TIME.

25 A. YEAH, I -- I STATED THE ONE RESERVATION I HAD,

1 WHICH IS THAT LITERALLY IF THE -- IF THERE'S NO SINGLE  
2 ENTRY OF THE EXECUTE COMMAND, IF THAT HASN'T HAPPENED,  
3 THEN YOU DON'T HAVE FIRST INFORMATION, BUT YOU HAVE  
4 POTENTIAL -- I'LL AGREE, THERE'S POTENTIAL FIRST  
5 INFORMATION UNDER YOUR READING OF THE CLAIM.

6 Q. OKAY. SO YOU WILL AGREE THE PREAMBLE LITERALLY  
7 INFRINGES, THAT PREAMBLE, THE ACCUSED OFFICE XP  
8 LITERALLY INFRINGES THE PREAMBLE?

9 MR. SCHERKENBACH: OBJECTION.

10 THE COURT: SUSTAINED.

11 Q. I'LL GET TO THE OTHER STUFF IN A MINUTE.

12 THE PREAMBLE LITERALLY -- STRIKE THAT. OFFICE  
13 XP LITERALLY INFRINGES THE PREAMBLE OF THE CLAIM?

14 MR. SCHERKENBACH: OBJECTION.

15 THE COURT: SUSTAINED.

16 Q. OFFICE XP --

17 THE COURT: WE CAN TAKE THAT UP AT THE RECESS,  
18 MR. HAYES, IF YOU WANT TO ARGUE FURTHER ON THAT.

19 MR. HAYES: SURE.

20 Q. OFFICE XP HAS EACH AND EVERY ELEMENT IN THE  
21 PREAMBLE; CORRECT?

22 A. WITH THE RESERVATION I STATED ABOUT THE FIRST  
23 INFORMATION.

24 Q. OKAY. AND FIRST INFORMATION, SIR, THAT IS THE TEXT  
25 IN THE DOCUMENT THAT'S ENTERED BY A USER; CORRECT?

1       A.  IT'S THE INFORMATION THAT IS DETERMINED BY THE  
2       ANALYSIS PROCESS THAT CAN BE USED AS PART OF THE RECORD  
3       RETRIEVAL.

4       Q.  SIR --

5       A.  IT'S NOT ALL THE TEXT THAT'S TYPED IN BY THE USER.

6       Q.  SIR, IF I TYPE INTO THE DOCUMENT, LET ME GIVE YOU  
7       AN EXAMPLE, "MR. ATLE HEDLOY," THAT WOULD BE FIRST  
8       INFORMATION; CORRECT?

9       A.  YES.  I WAS GIVING THE EXAMPLE IF I TYPE THE FULL  
10       SENTENCE, THERE WOULD BE MANY WORDS THAT WEREN'T FIRST  
11       INFORMATION.  IN THE EXAMPLE OF THE PATENT, "MR. ATLE  
12       HEDLOY" IS CERTAINLY FIRST INFORMATION.

13       Q.  OKAY.  AND IN THE CONTEXT, SIR, OF THIS -- IN THE  
14       CONTEXT, A MICROSOFT WORD DOCUMENT COULD INCLUDE FIRST  
15       INFORMATION; IS THAT TRUE?

16       A.  I'M SORRY, I DIDN'T UNDERSTAND THE FIRST PART OF  
17       YOUR QUESTION THERE.  "IN THE CONTEXT," IS THAT WHAT  
18       YOU SAID?

19       Q.  YEAH, IN THE CONTEXT OF THIS PREAMBLE, MICROSOFT  
20       WORD DOCUMENT COULD INCLUDE FIRST INFORMATION, IS THAT  
21       RIGHT?

22       A.  I ALREADY STATED MY RESERVATIONS ABOUT THAT.

23       Q.  WHAT'S THE ANSWER, YES OR NO?

24       A.  I SAID -- AS I'VE SAID BEFORE, I SAID YES WITH THE  
25       RESERVATIONS THAT I'VE ALREADY STATED.

1 Q. IN SMART TAGS I CAN TYPE IN THE NAME, "ATLE  
2 HEDLOY," RIGHT?  
3 A. THAT'S CORRECT.  
4 Q. AND THAT, IT WOULD BE FAIR TO SAY, IS FIRST  
5 INFORMATION; CORRECT?  
6 A. IN THE CONTEXT OF ANALYZING IT WITH RESPECT TO THIS  
7 PATENT, IT'S CERTAINLY POTENTIALLY FIRST INFORMATION,  
8 YES.  
9 Q. FINE. NOW, THE CLAIM THEN GOES ON AND SAYS,  
10 "PROVIDING A RECORD RETRIEVAL PROGRAM," DO YOU SEE  
11 THAT?  
12 A. YES, I DO.  
13 Q. AND IN SMART TAGS ONE OR MORE OF THE ACTION  
14 HANDLERS PROVIDES A RECORD RETRIEVAL PROGRAM; CORRECT?  
15 A. THAT'S CORRECT.  
16 Q. NOW, THE NEXT ELEMENT SAYS, "PROVIDING AN INPUT  
17 DEVICE CONFIGURED TO ENTER AN EXECUTE COMMAND," DO YOU  
18 SEE THAT?  
19 A. I DO.  
20 Q. AND THEN IT DESCRIBES WHAT THAT COMMAND IS AFTER  
21 THE WORD, "WHICH"; CORRECT?  
22 A. THAT'S CORRECT.  
23 Q. AND IT SAYS, "IT PROVIDES AN ENTER EXECUTE COMMAND  
24 WHICH INITIATES A RECORD RETRIEVAL PROGRAM FROM AN  
25 INFORMATION SOURCE," ETC. DO YOU SEE THAT?

1     A.   I DO.

2     Q.   NOW, YOU'VE REVIEWED THE PATENT, RIGHT?

3     A.   YES.

4     Q.   ALL RIGHT.  AND MICROSOFT IN OFFICE XP DOES,

5     INDEED, PROVIDE A COMMAND, EXECUTE COMMAND, WHICH

6     INITIATES A RECORD RETRIEVAL PROGRAM; CORRECT?

7     A.   AS I SAID YESTERDAY, MICROSOFT PROVIDES A MEANS OF

8     -- YOU INITIATE AN ACTION USING A MULTISTEP -- USING

9     MULTIPLE COMMAND MULTIPLE STEP, YOU HAVE TO DO THE

10    SELECTION FIRST.  THE LAST STEP OF THAT MULTISTEP

11    PROCESS CAN, INDEED, BE AN EXECUTE OF A RECORD

12    RETRIEVAL PROGRAM.

13    Q.   SIR, LET'S SIMPLY JUST GET IT THIS WAY.  MICROSOFT

14    IN OFFICE XP HAS AN EXECUTE COMMAND WHICH INITIATES A

15    RECORD RETRIEVAL PROGRAM; CORRECT?

16    A.   I JUST SAID THE LAST STEP OF THAT MULTISTEP

17    PROCESS, WHICH IS ESSENTIAL IN SMART TAGS, DOES

18    INITIATE A RECORD RETRIEVAL PROGRAM -- CAN INITIATE A

19    RECORD RETRIEVAL PROGRAM.

20    Q.   OKAY, THANK YOU.  NOW, IF WE MOVE DOWN NOW TO THE

21    NEXT PARAGRAPH, IT SAYS, "UPON A SINGLE ENTRY OF THE

22    EXECUTE COMMAND BY MEANS OF THE INPUT DEVICE."

23            "UPON" WOULD MEAN, TO ONE OF ORDINARY SKILL IN

24    THE ART, AS OF THE TIME OF THIS INVENTION, ON OR

25    IMMEDIATELY AFTER; ISN'T THAT CORRECT?

1     A.  I INTERPRET IT AS MEANING AS SOON AS YOU'VE DONE  
2     THIS SINGLE ENTRY, YOU DO THE FOLLOWING STEPS.  IS THAT  
3     ON OR IMMEDIATELY AFTER?  I GUESS THAT'S THE SAME  
4     THING.  
5     Q.  SO THE ANSWER TO MY QUESTION IS YES?  
6     A.  I WAS JUST EXPLAINING MY REASONING, YES.  
7     Q.  BUT THE ANSWER TO THE QUESTION IS YES, "UPON" MEANS  
8     ON OR IMMEDIATELY AFTER, CORRECT, THAT WOULD BE FAIR?  
9     A.  I DON'T UNDERSTAND WHAT "ON" MEANS WHEN YOU ARE  
10    TALKING ABOUT A COMPUTER COMMAND.  YOU HAVE TO ISSUE  
11    THE COMMAND FIRST AND THEN SOMETHING WILL HAPPEN.  
12    Q.  SO "UPON," YOU WILL AGREE, WILL MEAN IMMEDIATELY  
13    AFTER?  
14    A.  THAT'S CORRECT, YES.  
15    Q.  AND THEN IT SAYS, "UPON A SINGLE ENTRY," WE ALL  
16    KNOW WHAT THAT MEANS, "SINGLE" MEANS ONE, RIGHT?  
17    A.  THAT'S CORRECT.  
18    Q.  AND THEN IT SAYS, "OF THE EXECUTE COMMAND."  DO YOU  
19    SEE THAT?  
20    A.  I SEE THAT.  
21    Q.  IT DOESN'T SAY AN EXECUTE COMMAND, CORRECT?  
22    A.  THAT'S RIGHT.  
23    Q.  AND THE EXECUTE COMMAND THAT'S BEING REFERRED TO IS  
24    WHAT IS IN THE PRECEDING PARAGRAPH, THE PREDICATE,  
25    NAMELY, A COMMAND THAT INITIATES A RECORD RETRIEVAL;

1 CORRECT?

2 A. I BELIEVE THAT'S TRUE, YES.

3 Q. THANK YOU. AND THEN WE FINALLY GET TO THE LAST

4 WORD, WHICH IS INPUT DEVICE, RIGHT?

5 A. RIGHT.

6 Q. AND INPUT DEVICE, IN ACCORDANCE WITH THIS PATENT,

7 CAN INCLUDE A MENU; CORRECT?

8 A. I CERTAINLY WILL AGREE THAT IN GENERAL A MENU IS AN

9 INPUT DEVICE.

10 Q. OKAY, THANK YOU. AND IN SMART TAGS THERE IS A

11 MENU; CORRECT?

12 A. YES, THERE IS A MENU.

13 Q. AND IT WOULD BE FAIR TO SAY THAT THAT MENU IS AN

14 INPUT DEVICE?

15 A. IT'S A METHOD OF SELECTING AN ACTION IN THE CASE OF

16 SMART TAGS.

17 Q. AND THE -- WHEN YOU CLICK ON THE MENU ITEM, IT

18 INITIATES A RECORD RETRIEVAL PROGRAM, ISN'T THAT

19 CORRECT?

20 A. YOU MEAN WHEN YOU CLICK ON ONE OF THE ACTIONS IN

21 THE --

22 Q. YES.

23 A. -- IN THE LIST OF ACTIONS?

24 Q. WHEN YOU CLICK ON AN ACTION IN THE MENU, IT

25 INITIATES A RECORD RETRIEVAL PROGRAM; CORRECT?



1     A.  AS I SAID, THAT'S THE LAST STEP OF THAT MULTISTEP  
2     PROCESS, INCLUDING THE SELECTION AND IN THE CASE OF  
3     SMART TAGS, THAT LAST STEP DOES -- CAN INVOKE A RECORD  
4     RETRIEVAL PROGRAM.  I ALREADY AGREED TO THAT.

5     Q.  AND, SIR -- ALL RIGHT.  NOW, AND AFTER IN THIS  
6     CLAIM HERE, AFTER THERE IS THIS SINGLE ENTRY OF THE  
7     EXECUTE COMMAND, WHICH WE'VE AGREED IS SOMETHING TO  
8     INITIATE A RECORD RETRIEVAL PROGRAM BY THE INPUT  
9     DEVICE, WHICH WE'VE AGREED COULD BE A MENU, YOU HAVE TO  
10    DO THESE FOLLOWING STEPS, RIGHT?

11           MR. SCHERKENBACH:  OBJECT TO THE LEAD IN.

12           THE COURT:  SUSTAINED.

13    Q.  AFTER YOU CLICK ON A -- AFTER YOU HAVE THIS SINGLE  
14    ENTRY OF THE EXECUTE COMMAND, THEN THE FOLLOWING STEPS  
15    OCCUR; CORRECT?

16    A.  THE STEPS OF ANALYZING, RECORD RETRIEVAL, AND ONE  
17    OF THE OTHER THREE THINGS, YES.

18    Q.  ALL RIGHT.  NOW, IN SMART TAGS WHEN YOU CLICK ON  
19    THE MENU ITEM THAT SAYS, FOR EXAMPLE, "INSERT ADDRESS,"  
20    THE PROGRAM AUTOMATICALLY SEARCHES THE DATABASE FOR AN  
21    ADDRESS, AND IF FOUND, AUTOMATICALLY INSERTS THAT  
22    ADDRESS INTO THE DOCUMENT; CORRECT?

23    A.  THAT'S RIGHT.  WE SKIPPED THE ANALYZING PART  
24    BECAUSE, AS I SAID, THAT LIMITATION IS NOT PRESENT IN  
25    SMART TAGS AND THEN WE DO THE REST OF THE STEPS.

1           MR. HAYES: I MOVE TO STRIKE IT AS  
2           NONRESPONSIVE, JUDGE.

3           THE COURT: DENIED.

4           Q. SIR, I'LL GET TO ANALYZING IN A MINUTE. JUST CAN  
5           YOU FOLLOW THE QUESTION. WHEN YOU CLICK ON THE MENU,  
6           SAY, ITEM, THAT SAYS "INSERT ADDRESS," THE PROGRAM  
7           AUTOMATICALLY SEARCHES THE DATABASE FOR THE ADDRESS AND  
8           IF FOUND, AUTOMATICALLY INSERTS THAT ADDRESS INTO THE  
9           DOCUMENT; CORRECT?

10          A. IN THE CASE OF THE SMART TAGS "INSERT ADDRESS"  
11          ACTION, WHAT IT DOES EFFECTIVELY IS TO SEARCH THE  
12          CONTACT'S DATABASE AND THEN PUT THAT ADDRESS INTO THE  
13          DOCUMENT. THAT'S CORRECT.

14          Q. OKAY, THANK YOU. AND ALL OF THIS, NAMELY, THE  
15          SEARCHING OF THE DATABASE AND THE INSERTION OF THE  
16          ADDRESS INTO THE DOCUMENT, ALL OCCURS AFTER A SINGLE  
17          CLICK ON THAT MENU ITEM; CORRECT?

18          A. IT OCCURS AFTER -- AS I'VE SAID A COUPLE OF TIMES  
19          ALREADY, THE LAST STEP OF THAT MULTISTEP PROCESS YOU  
20          SELECT THAT ACTION AND THEN THOSE TWO THINGS HAPPEN,  
21          THAT'S CORRECT.

22          Q. WELL, SIR, YOU SAID, I THINK, ON DIRECT, THAT THE  
23          SELECTION OF PUSHING THIS ICON TO SELECT THE MENU, I  
24          THINK YOU TOLD THE JURY WAS CRITICAL TO SMART TAGS;  
25          CORRECT?

1       A.   I DID NOT SAY THAT, NO.

2       Q.   ARE YOU SURE?

3       A.   I SAID THAT THERE WERE, I THINK -- I THINK THE

4       CONTEXT YOU'RE TALKING ABOUT IS WHERE I WAS ASKED HOW

5       MANY COMMANDS ARE REQUIRED TO INITIATE A RECORD

6       RETRIEVAL, AND I SAID THREE, AND ONE OF THEM WAS

7       SELECTING THE ICON TO GET THE MENU.

8       Q.   WELL, SIR, PULLING DOWN MENUS IS AS OLD AS THE

9       HILLS AS OF THE TIME OF THIS PATENT; CORRECT?

10      A.   CERTAINLY, SELECTING FROM A MENU IN GENERAL IS AN

11      OLD TECHNOLOGY, THAT'S CORRECT.

12      Q.   NO, PULLING IT DOWN IS AS OLD AS THE HILLS AS OF

13      THE TIME OF THIS PATENT?

14      A.   THE SORTS OF MENUS THAT WERE UP ON THE TOOL BARS OF

15      OFFICE HAVE BEEN AROUND FOR A LONG TIME.

16      Q.   AND WERE YOU HERE IN COURT WHEN MR. REYNAR

17      TESTIFIED?

18      A.   YES, I WAS.

19      Q.   AND MR. REYNAR, I ASKED HIM THE QUESTION, THE SAME

20      THAT I DID TO YOU, AND HE TESTIFIED THAT PULLING --

21      PUSHING THE ICON TO PULL DOWN THE MENU WAS NOT A

22      FUNDAMENTAL FEATURE OF SMART TAGS, DID YOU HEAR HIM SAY

23      THAT?

24      A.   YES, I HEARD THAT.

25      Q.   AND WHO DO YOU THINK KNOWS MORE ABOUT HOW SMART

1 TAGS WORKS, YOU OR HIM?

2 A. HE DESIGNED THE SYSTEM, SO HE DEFINITELY KNOWS MORE  
3 ABOUT THE INTERNALS OF SMART TAGS.

4 Q. NOW, AND, SIR, WHEN YOU DO PULL DOWN THE MENU, I  
5 THINK AS YOU'VE AGREED, WHEN YOU CLICK ON THE ICON, YOU  
6 AGREED WITH ME THAT IT DOES NOT INITIATE A RECORD  
7 RETRIEVAL PROGRAM; CORRECT?

8 A. NO, CLICKING ON THE SMART TAGS ICON, I BELIEVE,  
9 DOES NOT INITIATE A RECORD RETRIEVAL PROGRAM.

10 Q. AND, IN FACT, WHEN YOU PULL DOWN THE MENU, IT DOES  
11 NOT INITIATE ANY ACTION; CORRECT?

12 A. IT CERTAINLY EXECUTES CODE AS MR. REYNAR DISCUSSED,  
13 IT HAS TO DO A NUMBER OF THINGS TO PULL DOWN THAT MENU.

14 Q. SO -- BUT THE FACT IS, THE ONLY EXECUTE COMMAND TO  
15 INITIATE THE RECORD RETRIEVAL AND INSERT THEREAFTER THE  
16 -- WHATEVER IS FOUND IN THE DATABASE, COMES ONLY AFTER  
17 YOU CLICK ON THE MENU ITEM; CORRECT?

18 A. YES, AS I'VE AGREED WITH YOU MANY TIMES SO FAR THIS  
19 MORNING, THAT THE LAST STEP OF THAT MULTISTEP PROCESS  
20 WHICH INCLUDES THE SMART TAG SELECTION, WHICH IS WHAT  
21 I'VE SAID MANY TIMES IS THE CRITICAL PART, THAT LAST  
22 STEP MAY INCLUDE RECORD RETRIEVAL.

23 Q. NOW, LET'S TALK ABOUT, SIR --

24 SIR, YOU KEEP SAYING ALL THESE PRIOR STEPS. DO  
25 YOU CONSIDER IT PART OF SMART TAGS, A STEP, WHEN YOU

1 PLUG THE COMPUTER IN, IS THAT CRITICAL?

2 A. ABSOLUTELY. IF YOU DON'T PLUG THE COMPUTER IN,  
3 THEN NOTHING IS GOING TO HAPPEN.

4 Q. AND IS IT PART OF SMART TAGS WHEN YOU PUSH THE  
5 BUTTON TO TURN IT ON?

6 A. WELL, YOU CAN'T USE SMART TAGS WITHOUT DOING THAT,  
7 BUT, YOU KNOW, THAT'S TRUE OF ANYTHING ON THE COMPUTER.

8 Q. SO YOU'RE READING ALL THOSE LIMITATIONS, PLUGGING  
9 IT IN, PUSHING IT ON, INTO THE CLAIM?

10 A. NO, OF COURSE I'M NOT.

11 MR. SCHERKENBACH: OBJECTION, ARGUMENTATIVE.

12 THE COURT: THE QUESTION WAS ANSWERED.

13 Q. NOW, SIR, IF WE LOOK BACK AT THE LANGUAGE, IT SAYS  
14 UPON A SINGLE ENTRY OF THE EXECUTE COMMAND ALL THIS  
15 STUFF HAPPENS; CORRECT?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT, OKAY. AND THE EXECUTE COMMAND, AS  
18 YOU'VE TOLD ME, IS THE RECORD RETRIEVAL; CORRECT?

19 A. WHAT I -- WHAT I AGREED WITH, THE EXECUTE COMMAND  
20 WAS REFERRING TO THE ONE IN THE PREVIOUS STATEMENT IN  
21 THE CLAIM.

22 Q. WHICH INITIATES RECORD RETRIEVAL?

23 A. THAT'S RIGHT, THAT'S THE WAY THE CLAIM IS WRITTEN.

24 Q. OR PUSHING THE BUTTON TO PULL THE MENU DOES NOT  
25 INITIATE RECORD RETRIEVAL?

1 A. IN SMART TAGS ARE WE TALKING ABOUT NOW?

2 Q. YEAH, YEAH. YOU JUST TOLD ME THAT 20 TIMES,

3 CORRECT?

4 A. I'VE TOLD YOU 20 TIMES THAT A -- THERE IS THIS

5 MULTISTEP PROCESS; THAT'S ONE OF THE STEPS TO GET TO

6 THE ACTION OF INITIATING RECORD RETRIEVAL.

7 Q. BUT THE POINT IS, IT DOESN'T INITIATE THE RECORD

8 RETRIEVAL WHEN YOU PUSH ON THE MENU TO PULL THE MENU

9 DOWN, RIGHT?

10 A. WELL, WHAT I SAID YESTERDAY IS SMART TAGS IS

11 MISSING THIS ELEMENT --

12 THE COURT: EXCUSE ME. READ THE QUESTION BACK

13 TO DR. CROFT.

14 (QUESTION READ BACK)

15 A. I THINK I ALREADY AGREE WITH THAT, YES.

16 Q. AND THE CLAIM IS TALKING ABOUT UPON A SINGLE ENTRY

17 OF THE EXECUTE COMMAND ALL THIS OTHER STUFF HAPPENS,

18 RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND YOU'RE TALKING ABOUT STUFF HAPPENING BEFORE THE

21 CLICK ON THE ACTION ITEM, ALL OF WHICH DOESN'T EVEN

22 INITIATE A RECORD RETRIEVAL PROGRAM, AS YOU TOLD ME

23 JUST THEN; CORRECT?

24 A. THAT'S BECAUSE I WAS TALKING ABOUT SMART TAGS,

25 WHICH DOESN'T INCLUDE THIS LIMITATION OF A SINGLE ENTRY

1       AND EXECUTE COMMAND. IT HAS THESE MULTIPLE ESSENTIAL  
2       STEPS, THE MOST ESSENTIAL ONE BEING THE SELECTION OF  
3       THE SMART TAG.

4       Q. THE SELECTION OF THE SMART TAG?

5       A. ABSOLUTELY.

6       Q. SIR, YOU UNDERSTAND THAT IN FACT -- YOU UNDERSTAND  
7       THAT IF OFFICE XP WITH SMART TAGS HAS EACH AND EVERY  
8       ELEMENT OF THIS CLAIM AS WRITTEN, IT INFRINGES,  
9       CORRECT?

10      A. THAT'S THE DEFINITION OF INFRINGEMENT, I BELIEVE,  
11      YES.

12      Q. AND YOU UNDERSTAND THAT THEY CAN'T AVOID  
13      INFRINGEMENT BY ADDING ELEMENTS; CORRECT?

14      A. THAT'S CORRECT. I'VE BEEN ARGUING THAT THEY'RE  
15      MISSING ELEMENTS.

16      Q. RIGHT. IF YOU HAVE A PATENT THAT CALLS FOR A  
17      THREE-LEGGED STOOL AND THE DEFENDANT PUTS A FOURTH LEG  
18      IN, HE CAN'T AVOID INFRINGEMENT BY ADDING AN ELEMENT OR  
19      A STEP, RIGHT?

20      A. THAT SOUNDS LIKE WE'RE TALKING ABOUT DEPENDENT  
21      CLAIMS HERE. AS I SAID, I UNDERSTAND THAT ALL THESE  
22      CLAIM LIMITATIONS HAVE TO BE PRESENT TO INFRINGE AND  
23      SMART TAGS IS MISSING TWO OF THEM.

24      Q. EXCUSE ME. ALL THE LIMITATIONS HAVE TO BE PRESENT  
25      TO INFRINGE, AGREED? IS THAT RIGHT?

1 A. LET ME JUST THINK FOR A SECOND. YES.

2 Q. AND IF SMART TAGS HAS ALL THOSE LIMITATIONS, BUT  
3 ADDS SOME OTHER FEATURES, THEY DON'T AVOID INFRINGEMENT  
4 BY DOING SO; CORRECT?

5 A. IF THAT WAS THE CASE, THAT WOULD BE CORRECT.

6 Q. THANK YOU. NOW, LET'S TALK ABOUT ANALYZING, THIS  
7 NEXT STEP HERE. IT SAYS ANALYZING THE DOCUMENT.

8 SIR, ANALYZING THE DOCUMENT TO ONE OF ORDINARY  
9 SKILL IN THE ART MEANS TO LOOK AT THE TEXT OF THE  
10 DOCUMENT FOR SOME PURPOSE, ISN'T THAT TRUE?

11 A. I AGREE WITH THAT. IN THIS CASE THE PURPOSE IS TO  
12 IDENTIFY IF THE FIRST INFORMATION IS PRESENT.

13 Q. SO YOU AGREE WITH THE DEFINITION OF ANALYZE --

14 A. THAT WAS -- SORRY.

15 Q. WAIT A SECOND. YOU AGREE WITH THE DEFINITION OF  
16 ANALYZE, IT MEANS TO LOOK AT THE TEXT OF THE DOCUMENT  
17 FOR SOME PURPOSE; CORRECT?

18 A. THAT'S A GENERAL DEFINITION, WHERE THE PURPOSE IS  
19 SPECIFIC FOR THIS CLAIM WHICH IS -- WHICH IS IDENTIFY  
20 THE FIRST INFORMATION.

21 Q. I JUST WANT TO GET TO WHAT THE WORD ANALYZE MEANS.  
22 DO YOU AGREE WITH MY DEFINITION OF ANALYZE, TO LOOK AT  
23 THE TEXT OF THE DOCUMENT FOR SOME PURPOSE, CORRECT?

24 A. I AGREED THAT WAS A GENERAL DEFINITION, WHICH NEEDS  
25 TO BE MADE SPECIFIC FOR THIS CLAIM.



1 Q. WE'RE GETTING THERE. AND ASSOCIATED WITH THE TEXT  
2 IS WHAT IS CALLED METADATA, CORRECT?

3 A. CAN YOU BE -- CAN YOU REPHRASE THAT, PLEASE?

4 Q. CAN YOU TURN TO PAGE 65 OF YOUR DEPOSITION, PLEASE.

5 A. YES, I HAVE IT.

6 Q. LINE 2, QUESTION: "ALL RIGHT. AND THAT FORMATTING  
7 IS IN THE FORM OF WHAT THEY CALL METADATA; CORRECT?

8 ANSWER: I BELIEVE SO."

9 THAT WAS YOUR TESTIMONY; CORRECT?

10 A. YES, THAT'S RIGHT.

11 Q. AND ON LINE 13 IT SAYS, "SO THE METADATA, IT WOULD  
12 BE FAIR TO SAY" --

13 THE COURT: EXCUSE ME, MR. HAYES, IS THERE  
14 SOMETHING THAT YOU CONTEND IS INCONSISTENT ABOUT WHAT  
15 THE HAS WITNESS SAID NOW AND WHAT HE SAID IN HIS  
16 DEPOSITION?

17 MR. HAYES: YES, THAT'S THE POINT.

18 THE COURT: HE ASKED YOU TO REPHRASE THE  
19 QUESTION ON METADATA. SO WHY DON'T WE START THERE AND  
20 THEN YOU CAN GO TO THE DEPOSITION IF YOU THINK THERE IS  
21 SOMETHING INCONSISTENT.

22 Q. SIR, YOU'LL AGREE THAT FORMATTING IS A FORM OF  
23 METADATA, CORRECT?

24 A. CERTAINLY. WE SAW THE SORT OF FORMATTING XML IN  
25 THAT DOCUMENT REPRESENTATION, THAT'S CERTAINLY

1 METADATA.

2 Q. AND METADATA, IT WOULD BE FAIR TO SAY IS, INDEED,  
3 PART OF THE DOCUMENT; CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND IF YOU TYPE INTO THE DOCUMENT, FOR EXAMPLE,  
6 "MR. CROFT IS AN EXPERT FOR MICROSOFT," THE TITLE "MR."  
7 WOULD ALSO BE PART OF THE DOCUMENT; CORRECT?

8 A. THE TEXT "MR." -- IF YOU'LL STOP -- IS DEFINITELY  
9 PART OF THE TEXT OF THE DOCUMENT.

10 Q. SO THE ANSWER IS CORRECT?

11 A. YES, I WAS TRYING TO MAKE IT A LITTLE BIT MORE  
12 PRECISE.

13 Q. AND, SIR, WHEN THE MENU ITEM IN SMART TAGS IS  
14 CLICKED, THE PROGRAM LOOKS AT THE METADATA, ISN'T THAT  
15 TRUE?

16 A. ONE OF THE ACTIONS ON THE ACTION MENU, YOU MEAN,  
17 WHEN YOU CLICK ON ONE OF THOSE?

18 Q. YES, SIR.

19 A. YES, IT DOES HAVE TO GET INFORMATION THAT'S BEEN  
20 STORED IN METADATA OF THE DOCUMENT.

21 Q. AND WHEN YOU CLICK JUST ONCE ON THE ACTION ITEM TO  
22 SAY, FOR EXAMPLE "INSERT ADDRESS," THE PROGRAM LOOKS AT  
23 THE SMART TAGS PROPERTY BAG, WHICH ARE STORED IN THE  
24 BOOKMARK STRUCTURES, IS THAT CORRECT?

25 A. YES, I THINK THAT'S FAIR TO SAY.

1 Q. AND ALL OF THIS, THIS LOOKING AT THE METADATA, THE  
2 RETRIEVAL PROCEDURE, AND THE INSERTION OF THE ADDRESS  
3 INTO THE DOCUMENT, ARE ALL DONE AUTOMATICALLY AFTER A  
4 SINGLE CLICK ON THAT MENU ITEM, ISN'T THAT TRUE?

5 A. YES.

6 Q. ALL RIGHT. NOW, YOU ALSO SAID -- DEHYDRATION.

7 NOW, YOU ALSO SAID, IF I RECALL YOUR TESTIMONY,  
8 THAT YOU REVIEWED THE CODE, THE SOURCE CODE OF SMART  
9 TAGS?

10 A. YES, I DID.

11 Q. IN YOUR DIRECT DID YOU CRITICIZE OR POINT TO ANY  
12 PORTION OF THE SMART TAG SOURCE CODE RELIED UPON BY  
13 MR. KLAUSNER?

14 A. NO, I DID NOT.

15 Q. AND THAT'S BECAUSE, SIR, IN FACT, YOU ARE NOT AN  
16 EXPERT IN READING THIS TYPE OF SOURCE CODE; CORRECT?

17 A. I'M CERTAINLY CAPABLE OF READING THE CODE AND  
18 UNDERSTANDING IT.

19 Q. CAN YOU TURN TO PAGE 44 OF YOUR DEPOSITION.  
20 QUESTION, LINE 7, "YOU JUST TESTIFIED UNDER OATH THAT  
21 YOU ARE NOT AN EXPERT IN THAT AREA; CORRECT? QUESTION  
22 11, "PLEASE ANSWER THE QUESTION. ANSWER: I WOULD HAVE  
23 TO SAY I'M NOT AN EXPERT IN THAT TYPE OF CODE."

24 THAT'S WHAT YOU TESTIFIED TO ON JUNE 15, 2004;  
25 CORRECT?

1     A.  I WAS SAYING THAT I WAS NOT AS EXPERT AS A  
2     MICROSOFT DEVELOPER IN THE -- IN UNDERSTANDING THE  
3     MICROSOFT SOURCE CODE, THAT'S WHAT I WAS SAYING THERE.

4     Q.  SIR, WHAT YOU SAID WAS, "I WOULD HAVE TO SAY THAT  
5     I'M NOT AN EXPERT IN THAT TYPE OF CODE. "

6             THAT'S WHAT YOU SAID THEN, CORRECT?

7     A.  THAT'S AN EXPERT IN THE COMPUTER SCIENCE SENSE.  
8     SOMEBODY -- A DEVELOPER CAN PICK UP -- A MICROSOFT  
9     SOURCE CODE DEVELOPER CAN PICK UP MICROSOFT SOURCE CODE  
10    WHICH HAS THOUSANDS AND THOUSANDS OF CALLS OF VERY  
11    STRANGE NAMES, AS WE'RE SAYING, AND THEY WILL BE ABLE  
12    TO READ IT FAIRLY EASILY BECAUSE THEY KNOW WHAT ALL  
13    THOSE CALLS MEAN.

14            I WASN'T SAYING THERE THAT I'M NOT AN EXPERT IN  
15    THE SENSE OF THIS CASE, WHETHER SOMEONE IS PERFECTLY  
16    CAPABLE OF READING THE CODE AND UNDERSTANDING WHAT IT  
17    MEANS.  I CERTAINLY COULDN'T DEVELOP THE CODE AS EASILY  
18    AS SOMEONE WHO HAS BEEN DOING IT FOR YEARS IN  
19    MICROSOFT.

20    Q.  SIR, YOU HAD TO REFER TO MR. HIGASHIYAMA TO ANSWER  
21    ANY TYPE OF QUESTIONS ON THE CODE; CORRECT?

22    A.  I HAD SOME QUESTIONS THAT NEEDED TO BE RESOLVED  
23    BECAUSE OF THEIR COMPLEXITY OF THEIR INTERFACE  
24    STRUCTURE IN MICROSOFT CODE, AND THE BEST WAY OF  
25    RESOLVING THAT WAS BY TALKING WITH THE -- ABOUT ONE OF

1 THE DEVELOPERS, THAT'S CORRECT.

2 Q. AND NOW THAT YOU SAY YOU ARE CAPABLE OF READING THE  
3 CODE, YOU NEVER READ THE CODE MR. KLAUSNER REFERRED TO  
4 AND OFFERED ANY TESTIMONY ABOUT THAT CODE, DISPUTING  
5 HIS TESTIMONY, CORRECT?

6 A. I DIDN'T. AND -- WE HEARD MR. REYNAR'S TESTIMONY  
7 ABOUT THAT.

8 Q. NOW, YOU ALSO, EXCUSE ME. YOU ALSO, SIR -- LET ME  
9 ASK YOU THIS QUESTION. YOU HEARD MR. REYNAR'S  
10 TESTIMONY THAT WHEN THIS SMART TAGS IS DESIGNED TO  
11 OPERATE, YOU TYPE IN THE NAME, AND LET'S ASSUME WE HAVE  
12 INSERT ADDRESS WORKING, THAT YOU TYPE IN THE NAME AND  
13 THE UNDERLINE IDENTIFIES, THAT LITTLE PURPLE UNDERLINE  
14 IDENTIFIES THE FIRST INFORMATION, CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND THAT IS ALL DONE AUTOMATICALLY WITHOUT THE USER  
17 HAVING TO DO ANYTHING OTHER THAN JUST TYPE THE NAME,  
18 CORRECT?

19 A. CORRECT.

20 Q. AND YOU ALSO HEARD MR. REYNAR TESTIFY THAT WHEN WE  
21 DO SMART TAGS, IT IS TYPICALLY AND USUALLY USED ON THE  
22 FLY; CORRECT?

23 MR. SCHERKENBACH: OBJECTION, LACKS FOUNDATION.

24 THE COURT: SUSTAINED.

25 Q. WERE YOU HERE WHEN MR. REYNAR TESTIFIED?

1 A. I WAS.

2 Q. AND DID YOU HEAR HIM TESTIFY, IN FACT, THAT WHEN  
3 THEY TYPE THE SMART TAGS, THE TYPICAL USE OF SMART TAGS  
4 IS ON THE FLY?

5 MR. SCHERKENBACH: SAME OBJECTION.

6 THE COURT: WHAT IS THE OBJECTION?

7 MR. SCHERKENBACH: LACKS FOUNDATION.

8 THE COURT: WELL, I'LL OVERRULE THAT AS TO THAT  
9 OBJECTION. YOU MAY ANSWER.

10 A. I REMEMBER ON THE FLY BEING DISCUSSED, I DON'T  
11 REMEMBER WHAT HIS PRECISE ANSWER WAS ABOUT THAT.

12 Q. AND, SIR, YOU DON'T REALLY KNOW HOW IT'S USED,  
13 WHETHER IT'S ON THE FLY OR WHAT, DO YOU?

14 A. I'VE SEEN A LOT OF DOCUMENTATION DISCUSSING HOW  
15 IT'S USED; I KNOW HOW I USE IT MYSELF AND HOW OTHER  
16 PEOPLE THAT I KNOW USE IT.

17 Q. WHO DO YOU THINK WOULD BE MORE KNOWLEDGEABLE AS TO  
18 HOW SMART TAGS IS ACTUALLY USED, YOU OR MR. REYNAR?

19 A. I IMAGINE THAT HE'S DISCUSSED HOW IT'S USED WITH A  
20 LOT OF MICROSOFT PEOPLE, SO PROBABLY HIM.

21 Q. OKAY. NOW LET'S TALK, IF WE WILL, A BIT ABOUT YOUR  
22 THEORIES ON ANTICIPATION. OKAY?

23 A. OKAY.

24 Q. AND YOU UNDERSTAND THAT TO ANTICIPATE A PATENT  
25 CLAIM YOU MUST -- THE PRIOR ART MUST SHOW EACH AND

1 EVERY ELEMENT OF THAT CLAIM ARRANGED IN EXACTLY THE  
2 SAME MANNER AND FUNCTIONING IN EXACTLY THE SAME WAY IN  
3 ONE SINGULAR PIECE OF PRIOR ART, CORRECT?

4 A. I BELIEVE THAT'S A REASONABLE DEFINITION, YES.

5 Q. AND YOU KNOW THAT MICROSOFT HERE HAS DROPPED ITS  
6 OBVIOUSNESS DEFENSE?

7 MR. SCHERKENBACH: OBJECTION, ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 Q. WELL, YOU KNOW, SIR, THAT WHEN YOU START COMBINING  
10 SEPARATE REFERENCES, YOU GET OUT OF THE REALM OF  
11 ANTICIPATION AND INTO THE REALM OF OBVIOUSNESS;  
12 CORRECT?

13 A. YES, I UNDERSTAND THAT.

14 Q. NOW, SIR, YOU TESTIFIED HERE TO, I BELIEVE, FIVE  
15 PIECES OF PRIOR ART; CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND, SIR, YOUR OPINION AND YOUR VIEW AS OF AT LEAST  
18 A COUPLE OF WEEKS AGO OR SO, WAS THAT ALL OF THEM WERE  
19 EQUALLY THE SAME FOR ANTICIPATION, EQUALLY GOOD, RIGHT?

20 A. I SAID THAT THEY ALL ANTICIPATED THE PRIOR ART.

21 Q. ALL RIGHT.

22 A. I'M SORRY, ANTICIPATED THE PATENT.

23 Q. AND SO ACCORDING TO YOU, ANY ONE OF THESE PIECES OF  
24 PRIOR ART THAT YOU SHOWED THE JURY IS AS GOOD FOR THE  
25 PURPOSES OF ANTICIPATION AS ANY OTHER ONE, CORRECT?

1       A.  THEY ALL ANTICIPATE.

2       Q.  ONE IS AS GOOD AS THE OTHER; CORRECT?

3       A.  IF ANY ONE OF THEM ANTICIPATES, IT'S MY

4       UNDERSTANDING THE PATENT IS INVALID.

5       Q.  THAT'S NOT THE QUESTION.  ONE OF THE PIECES OF

6       PRIOR ART IS AS GOOD AS THE OTHER IN YOUR OPINION?

7       A.  IF THEY ALL ANTICIPATE, THEN ONE'S AS GOOD AS THE

8       OTHER IN TERMS OF INVALIDATING THE PATENT.

9       Q.  WELL, SIR, YOU WERE ASKED TO PICK OUT OF THESE

10      WHICH ONES WAS THE BEST, AND YOU INDICATED THAT, IN

11      FACT, ONE'S AS GOOD AS THE OTHER FOR THE PURPOSES OF

12      ANTICIPATION, CORRECT?

13      A.  WE HAD A LONG DISCUSSION ABOUT WHAT EXACTLY YOU

14      MEANT BY BEST.  AND I THINK I ENDED UP BY CONCLUDING

15      THAT UNDER YOUR DEFINITION OF BEST THAT I COULDN'T

16      REALLY DIFFERENTIATE BETWEEN THEM.

17      Q.  AND, IN FACT, I BELIEVE IT'S YOUR VIEW OF THESE

18      FIVE PIECES OF PRIOR ART THEY'RE ALL BASICALLY

19      EQUIVALENT FOR THE PURPOSES OF ANTICIPATION; CORRECT?

20      A.  THEY ARE FIVE SEPARATE PIECES OF PRIOR ART, EACH OF

21      WHICH I BELIEVE ANTICIPATES.  THAT'S MY OPINION.

22      Q.  BUT THAT'S NOT MY QUESTION.  MY QUESTION IS IN YOUR

23      VIEW THEY ARE ALL EQUIVALENT FOR THE PURPOSES OF

24      ANTICIPATION , ONE'S AS GOOD AS THE OTHER?

25      A.  AND AS I SAID JUST BEFORE, THEY'RE EQUIVALENT IN



1 THE SENSE THAT IF -- IF THEY ALL ANTICIPATE, IT ONLY  
2 TAKES ONE OF THEM TO INVALIDATE THE PATENT.

3 Q. WELL, WHICH ONE IS THE BEST ONE, TO CUT TO THE  
4 CHASE HERE, SIR, YOU GAVE US FIVE PIECES OF PRIOR ART,  
5 WHICH ONE IN YOUR VIEW IS THE BEST REFERENCE, IF YOU  
6 HAVE TO CHOOSE ONE?

7 A. I'M NOT GOING TO CHOOSE ONE. I DON'T --

8 Q. YOU CAN'T CHOOSE ONE. IS IT ADDRESSMATE, DATA  
9 DETECTORS, WHICH ONE?

10 A. THEY ALL ANTICIPATE THE PRIOR ART IN MY OPINION.

11 Q. WHICH ONE IS THE BEST ONE, THE CLOSEST ONE YOU  
12 THINK?

13 A. CLOSEST IN WHAT SENSE?

14 Q. CLOSEST IN DESCRIBING AND ANTICIPATING HEDLOY'S  
15 INVENTION, WHICH IS WHAT WE'RE TALKING ABOUT HERE.

16 A. I KEEP SAYING MY OPINION WAS THAT THEY ALL  
17 ANTICIPATE THE PATENT.

18 Q. BUT MY QUESTION IS WHICH ONE DO YOU THINK IS THE  
19 CLOSEST PIECE OF PRIOR ART?

20 MR. SCHERKENBACH: OBJECTION.

21 THE COURT: I THINK WE'RE NOT GETTING ANYWHERE  
22 ON THAT QUESTION. WE'LL TRY IT ONE MORE TIME. CAN YOU  
23 TAKE ONE MORE SHOT AT ANSWERING THAT QUESTION IF YOU  
24 CAN. IS THERE ONE THAT YOU WOULD SAY IS THE CLOSEST OR  
25 NOT?

1 THE WITNESS: IT'S A LITTLE DIFFICULT TO DO  
2 THAT, JUDGE, WITHOUT A GOOD DEFINITION OF WHAT CLOSEST  
3 MEANS.

4 THE COURT: OKAY, LET'S MOVE ON, THEN. IF YOU  
5 WANT TO TRY TO GIVE HIM A DEFINITION OF WHAT YOU MEAN  
6 BY CLOSEST, THAT MIGHT BE ONE WAY TO APPROACH IT.

7 MR. HAYES: THANK YOU, JUDGE.

8 Q. WHICH ONE DO YOU BELIEVE SHOWS EACH AND EVERY ONE  
9 OF THE ELEMENTS ARRANGED IN THE SAME MANNER, ETC.,  
10 BETTER THAN THE OTHER ONES?

11 A. I'M SORRY, BUT WE SEEM TO BE GOING IN A CIRCLE  
12 HERE. I WAS LOOKING FOR A DEFINITION OF CLOSEST,  
13 MEANING SAYING SOMETHING LIKE DEALING WITH NAMES AND  
14 ADDRESSES OR SOMETHING LIKE THAT.

15 Q. SO YOU CONSIDER THEM ALL BASICALLY EQUIVALENT FOR  
16 THE PURPOSES OF ANTICIPATION, TRUE?

17 A. AS I SAID YESTERDAY, I BELIEVE THAT THEY ALL  
18 ANTICIPATE THE PATENT, YES.

19 Q. NOW, SIR, LET'S TAKE, IF WE CAN, ONE OF THESE  
20 PIECES OF PRIOR ART AND LET'S TALK ABOUT ADDRESSMATE.

21 NOW, YOU TESTIFIED ABOUT ADDRESSMATE HERE;  
22 CORRECT?

23 A. THAT'S CORRECT.

24 Q. AND YOU UNDERSTAND THAT ADDRESSMATE WAS DESIGNED BY  
25 MR. BLOCK, TRUE?

1       A.   TRUE.

2       Q.   AND PRIOR TO FORMING YOUR OPINION AS EXPRESSED IN

3       YOUR EXPERT REPORT, YOU NEVER TALKED TO MR. BLOCK AS TO

4       HOW ADDRESSMATE WORKED; CORRECT?

5       A.   THAT'S CORRECT.

6       Q.   THE ONLY PEOPLE -- AND PRIOR TO YOUR REPORT, THE

7       ONLY INFORMATION THAT YOU GOT ON HOW ADDRESSMATE WORKED

8       WAS PROVIDED TO YOU BY MICROSOFT'S TRIAL LAWYERS; TRUE?

9       A.   I GOT A COPY OF THE USER MANUAL AND THE SOFTWARE

10      WAS -- WAS -- IT WAS SUGGESTED THAT I LOOK AT IT TO

11      EVALUATE IT, THAT'S CORRECT.

12      Q.   NOW, LET ME SHOW YOU, IF I WILL, YOUR SUPPLEMENTAL

13      EXPERT REPORT WHERE YOU DESCRIBE THE PRIOR ART.

14               DO YOU HAVE A COPY OF THAT?

15               (PAUSE)

16      Q.   I THINK YOU HAVE YOUR DEPOSITION UP THERE.

17      A.   THE DEPOSITION, YES.

18      Q.   YEAH.   LOOK AT TAB 10.

19      A.   YES, I HAVE IT.

20      Q.   AND TAB 10 IS YOUR SUPPLEMENTAL EXPERT REPORT, IS

21      THAT RIGHT?

22      A.   THAT'S CORRECT.

23      Q.   AND THAT IS AN EXPERT REPORT WHERE YOU SET FORTH

24      YOUR VIEWS OR OPINIONS ON THIS PRIOR ART; CORRECT?

25      A.   THAT'S CORRECT.

1 Q. AND TURN, IF YOU WILL, TO PAGE 13.

2 A. THAT'S 13 OF MY PAGE NUMBERING, IS IT?

3 Q. YES, DOWN AT THE BOTTOM. IT'S PARAGRAPH VIII.

4 A. YES, I HAVE IT.

5 Q. EIGHT.

6 MR. HAYES: YOUR HONOR, I'M GOING TO PUT THIS ON  
7 THE ELMO, BUT OBVIOUSLY IT'S -- IT IS FOR QUESTIONING  
8 SO --

9 THE COURT: SO IT SHOULDN'T BE DISPLAYED TO THE  
10 JURY, THEN?

11 MR. HAYES: YES, THAT'S CORRECT, BUT IF YOU  
12 COULD SEE IT.

13 Q. DO YOU SEE WHAT I HAVE HERE, SIR?

14 A. YES, I DO.

15 Q. NOW, I'VE GOT PAGE 13 HERE AND I HAVE ALL MY LITTLE  
16 NOTES ON IT, SO TO SPEAK, JUST TO SPEED THIS ALONG.

17 BUT LET'S LOOK AT THIS. HERE YOU IDENTIFY A PIECE OF  
18 PRIOR ART CALLED COSTAR ADDRESSMATE. CAN YOU SEE THAT?

19 A. YES, I CAN.

20 Q. AND THEN YOU IDENTIFY ALSO A USER MANUAL FOR THE  
21 PRODUCTS, ADDRESSMATE AND ADDRESSMATE PLUS FOR WINDOWS;  
22 CORRECT?

23 A. THAT'S CORRECT.

24 Q. WELL, ADDRESSMATE AND ADDRESSMATE PLUS -- AND YOU  
25 UNDERSTAND THIS ANALYSIS THAT YOU ARE DOING HERE IS FOR

1 ANTICIPATION ON ONE REFERENCE, RIGHT?

2 A. THAT'S CORRECT.

3 Q. IN HERE YOU NOTE, ADDRESSMATE AND ADDRESSMATE PLUS.

4 THOSE ARE TWO SEPARATE PRODUCTS, ISN'T THAT TRUE?

5 A. THE ONLY DIFFERENCE BETWEEN THEM IS ADDRESSMATE

6 PLUS HAS THE ADDRESS CORRECTION CAPABILITY I KNOW NOW,

7 YES.

8 Q. BUT THE POINT IS THEY ARE TWO SEPARATE PRODUCTS;

9 CORRECT?

10 A. I BELIEVE THAT YOU COULD BUY THEM SEPARATELY, YES.

11 Q. OKAY. AND IF WE LOOK AT THIS UNDERSTANDING --

12 YOU'LL AGREE THAT YOUR UNDERSTANDING OF HOW ADDRESSMATE

13 OR ADDRESSMATE PLUS WORKS IS CRUCIAL TO YOUR ANALYSIS?

14 A. AND MY ANALYSIS IS BASED ON THE USER MANUAL,

15 PRIMARILY.

16 Q. WELL, IT'S ALSO BASED --

17 A. MY UNDERSTANDING OF THAT USER MANUAL.

18 Q. YEAH. WHICH ALSO INCLUDED YOUR UNDERSTANDING OF

19 THE DISC OF THE ACTUAL PROGRAM THAT YOU RAN; CORRECT?

20 A. THE PROGRAM WAS HELPFUL IN UNDERSTANDING SOME

21 THINGS, YES.

22 Q. RIGHT. BUT THE POINT I'M GETTING AT IS YOUR

23 UNDERSTANDING TECHNICALLY AS TO HOW THIS PRIOR ART

24 WORKS IS CRUCIAL TO YOUR ANALYSIS?

25 A. CERTAINLY MY UNDERSTANDING OF THE OPERATION OF THE

1       PRODUCT IS CERTAINLY CRUCIAL, YES.

2       Q.   BECAUSE IF -- UNDER YOUR UNDERSTANDING IF IT  
3       DOESN'T OPERATE THE WAY YOU THINK IT OPERATES THAT THAT  
4       COULD MATERIALLY AFFECT YOUR OPINIONS, COULD IT NOT?

5       A.   AS I SAID, MY OPINIONS WERE BASED ON THE, PRIMARILY  
6       ON THE USER MANUAL AND THAT'S WHAT I WROTE MY ANALYSIS  
7       BASED ON.

8       Q.   BUT IF YOUR UNDERSTANDING OF HOW IT WORKS IS  
9       INCORRECT, THAT COULD -- YOU'VE GIVEN ME, THAT IT COULD  
10      HAVE AN EFFECT ON YOUR OPINIONS IF YOU'VE GOT HOW IT  
11      WORKS ALL WRONG?

12      A.   IF MY ANALYSIS OF WHAT IT SAID IN THE USER MANUAL  
13      IS INCORRECT, THEN OBVIOUSLY I GOT IT WRONG.

14      Q.   OKAY, THEN LET'S LOOK HERE.  YOU SAY, SIR, WITH THE  
15      TWO PRODUCTS, LET ME JUST --

16           THE COURT:  WE'RE GOING TO HAVE TO STOP THERE  
17      FOR THE MORNING RECESS, MR. HAYES, WE'LL HAVE TO PICK  
18      UP AFTER THE MORNING RECESS.

19           MR. HAYES:  YES, SIR.

20           THE COURT:  MEMBERS OF THE JURY, YOU MAY RETURN  
21      TO THE JURY ROOM.

22           (JURY EXCUSED)

23           THE COURT:  PLEASE BE SEATED, LADIES AND  
24      GENTLEMEN.  I WANTED TO REMIND YOU, DR. CROFT, THAT YOU  
25      ARE STILL UNDER CROSS-EXAMINATION AND YOU SHOULDN'T

1 DISCUSS YOUR TESTIMONY WITH ANYONE.

2 THE WITNESS: YES.

3 THE COURT: YOU MAY STEP DOWN, SIR. BEFORE WE  
4 BREAK, MR. HAYES, IS THE ISSUE THAT YOU PREVIOUSLY  
5 INDICATED YOU WANTED TO PURSUE, HAS THAT NOW BECOME  
6 MOOT, THE ISSUE OF WHETHER YOU CAN ASK DR. CROFT  
7 WHETHER THERE WAS LITERAL INFRINGEMENT OF THE PREAMBLE  
8 OF CLAIM 1?

9 MR. HAYES: BECOME MOOT?

10 THE COURT: DO YOU STILL WISH TO PURSUE THAT?  
11 THERE WAS AN OBJECTION TO THAT QUESTION; I SUSTAINED  
12 THE OBJECTION. YOU INDICATED --

13 MR. HAYES: I DON'T THINK SO.

14 THE COURT: OKAY.

15 SECOND, COUNSEL, I HAVEN'T YET RECEIVED FROM YOU  
16 THE PROPOSED GLOSSARY OF TERMS, DO YOU HAVE THOSE?

17 MR. HAYES: WE'RE WORKING ON IT, JUDGE.

18 MR. SCHERKENBACH: WE PUT A PROPOSAL TOGETHER  
19 AND SENT IT TO THEM AND I THINK THEY ARE STILL  
20 CONSIDERING IT.

21 THE COURT: AND WHEN WILL YOU FINISH CONSIDERING  
22 IT, MR. HAYES?

23 MR. HAYES: AFTER TODAY.

24 THE COURT: LET ME PUT IT THIS WAY --

25 MR. HAYES: WHEN DO YOU WANT IT, JUDGE?

1 THE COURT: I WANT IT BY 2:00 O'CLOCK THIS  
2 AFTERNOON, SO WHATEVER YOU NEED TO DO ON IT. IT  
3 SHOULDN'T BE HARD, I THINK THESE ARE UNDISPUTED TERMS.  
4 IF THERE WERE DISPUTED TERMS, THEN LET ME KNOW THAT AND  
5 I'LL DEFINE THOSE TERMS.

6 MR. HAYES: AS I SAID, JUDGE, WE'LL GET RIGHT TO  
7 IT DURING THE LUNCH BREAK AND YOU'LL HAVE IT.

8 THE COURT: OKAY. COURT WILL BE IN RECESS.

9 (MORNING RECESS 11:20 A.M. TO 11:40 A.M.)

10 THE COURT: BRING THE JURY IN, PLEASE.

11 (JURY PRESENT)

12 THE COURT: PLEASE BE SEATED, LADIES AND  
13 GENTLEMEN.

14 MR. HAYES: MAY I PROCEED, JUDGE?

15 THE COURT: YES.

16 MR. HAYES: THANK YOU.

17 Q. NOW, SIR, I THINK WHEN WE LEFT OFF, WE WERE TALKING  
18 ABOUT THIS ADDRESSMATE PRODUCT, I HAVE IT ON THE ELMO,  
19 IT SHOULDN'T BE PUBLISHED TO THE JURY BECAUSE IT'S NOT  
20 EVIDENCE. DO YOU SEE IT?

21 A. YES, I DO.

22 Q. NOW, SIR, IN ADDRESSMATE, WHEN YOU SAY HOW IT  
23 OPERATES, IT COMPARES TO CLAIM 1, YOU STATE THAT THE  
24 INFORMATION SOURCES, WHICH IS THE LANGUAGE USED IN  
25 CLAIM 1, IS THE DATABASE OF ZIP+4 ADDRESS; CORRECT?



1       A.   THAT'S CORRECT.

2       Q.   OKAY.  THAT'S DOWN AT THE BOTTOM OF YOUR REPORT,  
3       WHERE YOU SAY THE INFORMATION SOURCE IS THE DATABASE OF  
4       ZIP+4 ADDRESS.  IN THE NEXT SENTENCE YOU STATE "THE  
5       RECORD RETRIEVAL PROGRAM IS PART OF ADDRESSMATE THAT  
6       SEARCHES THE ZIP+4 DATABASE"; CORRECT?

7       A.   THAT'S CORRECT.

8       Q.   WELL, THE FACT IS, SIR, THAT ADDRESSMATE DOES NOT  
9       EVEN HAVE A ZIP+4 DATABASE; ISN'T THAT TRUE?

10      A.   I WAS USING -- THE MANUAL ITSELF USES ADDRESSMATE  
11      TO REFER TO BOTH OF THEM.  I WAS JUST BEING -- USING A  
12      SHORTHAND THERE.

13      Q.   A SHORTHAND?

14      A.   YES, I WAS USING ADDRESSMATE -- THE TWO SYSTEMS ARE  
15      VERY SIMILAR, THEY ONLY DIFFER IN ONE FEATURE.

16      Q.   RIGHT, BUT THERE -- ADDRESSMATE HAS -- ADDRESSMATE  
17      PLUS HAS A ZIP+4 DATABASE AND ADDRESSMATE DOES NOT;  
18      CORRECT?

19      A.   THAT'S CORRECT.

20      Q.   AND YOU'RE STATING HERE THAT THE RECORD RETRIEVAL  
21      PROGRAM IS PART OF ADDRESSMATE THAT SEARCHES THE ZIP+4  
22      DATABASE; THAT'S WRONG, CORRECT?

23      A.   AS I SAID, I WAS USING ADDRESSMATE TO REFER TO  
24      ADDRESSMATE PLUS IN THAT CASE, YES.

25      Q.   WELL, YOU WEREN'T USING ADDRESSMATE TO REFER TO

1 ADDRESSMATE PLUS IN THE FIRST SENTENCE OF YOUR REPORT,  
2 WERE YOU? YOU DISTINGUISH BOTH OF THEM.

3 A. THAT WAS BECAUSE THAT WAS THE TITLE OF THE USER  
4 MANUAL. BUT FROM THEN ON I CONSISTENTLY USED  
5 ADDRESSMATE TO REFER TO THAT PRODUCT.

6 Q. YOU DO. SIR, DID YOU EVER TALK TO -- WHO IS IT  
7 THAT DESIGNED THIS -- BLOCK -- BLOCK BEFORE YOU WROTE  
8 THIS REPORT TO FIND OUT IN WHICH PRODUCT THE ZIP+4  
9 DATABASE EVEN EXISTED?

10 A. NO, I DIDN'T NEED TO. IT'S CLEAR IN THE MANUAL.

11 Q. IT'S CLEAR IN THE MANUAL --

12 A. THAT'S CORRECT.

13 Q. -- EXCEPT IN YOUR REPORT. DID YOU READ THE MANUAL  
14 BEFORE YOU DID YOUR REPORT?

15 A. YES, OF COURSE, I DID.

16 Q. AND AFTER READING THE MANUAL, AND YOU SAY IT'S  
17 CLEAR IN IT, YOU REFER TO ADDRESSMATE HAVING THE ZIP+4  
18 DATABASE, NOT ADDRESSMATE PLUS, CORRECT?

19 A. AS I SAID, THE MANUAL OFTEN USES ADDRESSMATE AS  
20 SHORTHAND. IN FACT, IT STATES IT IN THE START, IT USES  
21 ADDRESSMATE AS SHORTHAND FOR ADDRESSMATE PLUS OFTEN. I  
22 GUESS I WAS BEING LAZY THERE IN NOT WRITING ADDRESSMATE  
23 PLUS EVERYWHERE.

24 Q. COULD IT POSSIBLY HAVE BEEN THAT YOU DIDN'T KNOW  
25 THAT, IN FACT, ZIP+4 WAS NOT IN ADDRESSMATE?

1 A. NO, IT'S VERY CLEAR IN THE MANUAL.

2 Q. AND BY THE WAY, HOW MANY TIMES -- YOU SUBMITTED

3 THIS REPORT AND READ IT BEFORE YOU SIGNED IT, CORRECT?

4 A. THE ORIGINAL REPORT, YES, AND I ALSO SUBMITTED A

5 SUPPLEMENTAL REPORT WHICH HAD A SMALL CHANGE TO IT,

6 YES.

7 Q. SO YOU READ THIS PARAGRAPH ABOUT TWICE, RIGHT?

8 A. AT LEAST TWICE, YES.

9 Q. AND YOU NEVER MADE THE CORRECTION FROM ADDRESSMATE

10 TO ADDRESSMATE PLUS; CORRECT?

11 A. BECAUSE I DIDN'T CONSIDER IT AN IMPORTANT THING. I

12 WAS USING IT AS SHORTHAND FOR ADDRESSMATE PLUS.

13 Q. NOW, ALSO HERE YOU STATE, I BELIEVE, THAT THE

14 SINGLE ENTRY OF THE EXECUTE COMMAND WHICH IS THE

15 LANGUAGE IN THE CLAIM IS DONE BY THE SELECTION OF THE

16 SAVE ADDRESS MENU OPTION; CORRECT?

17 A. THAT WAS MY ANALYSIS, YES.

18 Q. AND YOU FURTHER STATE THAT THE SAVE ADDRESS

19 FUNCTION IS SELECTED FROM A MENU IN A WORD PROCESSOR,

20 SUCH AS WORD, IS THAT CORRECT? LOOK WHERE I PUT THE

21 LITTLE 4 TO MOVE THIS ALONG.

22 A. THE 4. YES, THAT'S WHAT I SAID.

23 Q. IT SAYS THE SAVE ADDRESS FUNCTION, WHICH IS

24 SELECTED FROM A MENU IN A WORD PROCESSOR SUCH AS WORD,

25 RIGHT?

1 A. RIGHT.

2 Q. NOW, WORD IS A SEPARATE PROGRAM FROM ADDRESSMATE;  
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. SO YOU'RE COMBINING THE TWO PROGRAMS TO COME UP  
6 WITH THIS ANALYSIS, CORRECT?

7 A. I WASN'T COMBINING ANYTHING, I WAS RUNNING A SINGLE  
8 SYSTEM WHICH HAD THIS ADDRESSMATE INSTALLED, AND I WAS  
9 RUNNING IT FROM A DOCUMENT IN MICROSOFT WORD.

10 Q. SO YOU WERE COMBINING WORD AND ADDRESSMATE?

11 A. I WASN'T COMBINING REFERENCES. I WAS JUST USING A  
12 SINGLE SYSTEM.

13 MR. HAYES: EXCUSE ME. (COUNSEL CONFERRING)

14 Q. ADDRESSMATE PLUS IS NOT SOLD WITH WORD; CORRECT?

15 A. NO.

16 THE COURT: NO, IT'S NOT OR NO, IT'S NOT  
17 CORRECT?

18 THE WITNESS: SORRY, I LOST TRACK OF THAT ONE.

19 A. IT'S NOT SOLD WITH WORD, THAT IS CORRECT.

20 Q. SO YOU'RE COMBINING ONE REFERENCE, ADDRESSMATE  
21 PLUS, WHICH IS ONE PRODUCT WITH ANOTHER REFERENCE,  
22 WORD, WHICH IS A SEPARATE PRODUCT ON YOUR RELIANCE  
23 HERE?

24 A. I'M NOT COMBINING ANYTHING, JUST LIKE IN THE  
25 EXAMPLE WHERE IT HAS -- THE EXAMPLE OF WORD WITH THE

1 ONE BUTTON ON IT. THAT WAS AN EXAMPLE OF THE PATENT,  
2 AND I WAS USING A SYSTEM WITH WORD AND ADDRESSMATE  
3 INSTALLED -- ADDRESSMATE PLUS, I'M SORRY.

4 Q. IN OFFICE XP IT COMES WITH WORD, RIGHT?

5 A. WORD IS PART OF THE OFFICE XP TOOL.

6 Q. IT IS PART OF THE SINGLE, SINGULAR PRODUCT; RIGHT?

7 A. WELL, OFFICE XP IS A VERY BIG PRODUCT, INCLUDES  
8 LOTS OF DIFFERENT TOOLS.

9 Q. SO WHAT'S THE ANSWER?

10 A. YES, YOU GET IT WHEN YOU BUY OFFICE XP.

11 Q. AND WHEN YOU BUY ADDRESSMATE PLUS, YOU DON'T GET  
12 WORD; CORRECT?

13 A. YOU DO NOT.

14 Q. THANK YOU. THEN YOU ALSO GO ON TO SAY THAT THE  
15 CORRECTED ADDRESS -- STRIKE THAT. YOU GO ON TO SAY "IF  
16 THE AUTO CORRECTION OF SAVED ADDRESS OPTION IS ENABLED,  
17 ANY ADDRESS THAT IS SAVED IN THE DATABASE IS  
18 AUTOMATICALLY CORRECTED." DO YOU SEE THAT?

19 A. YES, I SEE THAT.

20 Q. WELL, YOU HEARD MR. BLOCK TESTIFY IN THIS COURT,  
21 RIGHT?

22 A. I DID.

23 Q. AND YOU WILL AGREE THAT MR. BLOCK, THE DESIGNER OF  
24 ADDRESSMATE, IS CLEARLY MORE KNOWLEDGEABLE OF HOW THIS  
25 PRODUCT WORKS?

1 A. THAT'S CORRECT.

2 Q. AND YOU HEARD HIM TESTIFY, IN FACT, THAT IF THE  
3 AUTO CORRECTION SAVED ADDRESS OPTION IS ENABLED AND  
4 YOU'RE ATTEMPTING TO PUSH A BUTTON FROM WORD, IT  
5 DOESN'T WORK, YOU HEARD THAT TESTIMONY?

6 A. I HEARD HIM SAY THAT THERE IS A BUG IN THE PROGRAM  
7 THAT PREVENTED THE PROGRAM WORKING FROM -- AS IT IS  
8 DESCRIBED IN THE MANUAL.

9 Q. SO THE PRODUCT -- AND, SIR, YOU KNEW WHEN YOU WROTE  
10 THIS SENTENCE ABOUT THE, "IF THE AUTO CORRECTION,"  
11 ETC., "IS SAVED, AUTOMATICALLY CORRECTED," YOU KNEW FOR  
12 A FACT THAT THE PRODUCT ITSELF, WHEN YOU PUSHED THAT  
13 BUTTON, DIDN'T WORK; CORRECT?

14 A. I TOLD YOU IN DEPOSITION THAT I HAD -- I KEPT  
15 GETTING ERRORS WHEN I TRIED THAT FUNCTION, BUT I  
16 UNDERSTOOD THAT THE USER MANUAL STANDS, AS ITSELF, IS  
17 PRIOR ART.

18 Q. WELL, YOU'RE RELYING ON A MANUAL THAT TALKS ABOUT A  
19 PRODUCT, AND WE HAVE THE PRODUCT AND EVERYBODY HAS  
20 TESTIFIED THAT IT DOESN'T WORK, SO YOU'RE GOING TO NOW  
21 COMBINE THE PRODUCT WITH A MANUAL MISDESCRIBING THE  
22 OPERATION OF THE PRODUCT; IS THAT YOUR TESTIMONY?

23 MR. SCHERKENBACH: OBJECTION, YOUR HONOR.

24 Q. WELL, WHAT DO YOU THINK, SIR, IF CARS CAN BE  
25 DESCRIBED IN A MILLION WAYS, BUT THE FACT IS IF THEY

1       DON'T WORK, THEY DON'T WORK, WOULD THAT BE FAIR TO SAY?

2       I'LL REPHRASE THE QUESTION.

3               THE FACT IS THE PRODUCT WHEN, IN FACT, THE AUTO  
4       CORRECTION OF SAVED ADDRESS OPTION IS ENABLED IN THE  
5       ACTUAL PRODUCT SOLD, WHEN YOU PUSH THE BUTTON ON THE  
6       MENU ITEM, IT DOESN'T WORK?

7       A.  AS I SAID, I KNEW THAT -- I FOUND OUT THAT THERE  
8       WAS A BUG IN THE PROGRAM, BUT I ALSO UNDERSTAND THAT  
9       THE MANUAL STANDS BY ITSELF AS PRIOR ART IN AN  
10      ANTICIPATION ARGUMENT.

11      Q.  SO ANY PIECE OF PRIOR ART -- YOU KNOW THIS TO BE A  
12      PIECE OF PRIOR ART HAS TO BE ENABLING, MEANING IT HAS  
13      TO WORK; CORRECT?

14      A.  I DON'T NECESSARILY MEAN -- I DON'T NECESSARILY  
15      AGREE WITH THAT DEFINITION.  I THINK THERE'S PROBABLY  
16      OTHER DEFINITIONS OF WHAT ENABLING MEANS.

17      Q.  YOU THINK IT'S LEGITIMATE TO RELY ON A MANUAL  
18      DESCRIBING SOMETHING THAT DOESN'T WORK AS WORKING TO  
19      INVALIDATE MR. HEDLOY'S PATENT?

20      A.  I WAS -- I HAVE BEEN INFORMED THAT IN THE AREA OF  
21      PATENT LAW, THAT A USER MANUAL STANDS BY ITSELF AS  
22      PRIOR ART FOR THE PURPOSES OF ARGUING ANTICIPATION;  
23      THAT'S WHAT I DID.

24      Q.  EVEN IF IT'S WRONG, EVEN IF WHAT IS SAID IN THE  
25      MANUAL IS WRONG?

1 A. YOU HEARD MR. BLOCK SAY THAT HE --

2 Q. EXCUSE ME.

3 A. I WAS ANSWERING THE QUESTION.

4 THE COURT: GO AHEAD.

5 A. YOU HEARD MR. BLOCK SAY THAT HE ALWAYS INTENDED THE  
6 SYSTEM TO WORK AS IT WAS DESCRIBED IN THE MANUAL. SO I  
7 WOULDN'T SAY THAT THE MANUAL IS WRONG.

8 Q. DID YOU EVER REVIEW THE SOURCE CODE FOR THIS  
9 PRODUCT?

10 A. NO, I DIDN'T, I DIDN'T NEED TO.

11 Q. THIS IS THE SOURCE CODE, IS IT NOT, THAT MR. BLOCK  
12 WOULDN'T GIVE US; CORRECT?

13 A. I UNDERSTAND THAT HE DID NOT GIVE THE SOURCE CODE  
14 TO ANYONE, THAT'S CORRECT.

15 Q. AND ONE WAY WE COULD FIGURE OUT WHETHER OR NOT THIS  
16 THING WORKED, OTHER THAN PLUGGING IT IN, WHICH WE KNOW  
17 IT DOESN'T WORK, IS TO REVIEW THE SOURCE CODE?

18 MR. SCHERKENBACH: OBJECTION, YOUR HONOR.

19 THE COURT: GROUND.

20 MR. SCHERKENBACH: IT'S ARGUMENTATIVE.

21 THE COURT: OVERRULED.

22 A. I DIDN'T NEED TO REVIEW THE SOURCE CODE IN ORDER TO  
23 UNDERSTAND THE USER MANUAL.

24 Q. SO YOU DIDN'T CARE WHETHER THE PRODUCT DIDN'T WORK,  
25 YOU JUST TOOK THE USER MANUAL ON ITS FACE, IRRESPECTIVE



1       OF THE FACT THAT IT'S DESCRIBING A PRODUCT THAT DOESN'T  
2       WORK; IS THAT YOUR TESTIMONY?

3       A.   OBVIOUSLY IT WOULD HAVE BEEN NICE IF THAT BUG HAD  
4       NOT BEEN IN THE SYSTEM, BUT AS I SAID, I UNDERSTOOD THE  
5       USER MANUAL STANDS BY ITSELF AS PRIOR ART, AND THAT'S  
6       THE LAW.

7       Q.   YOU SAY THAT THAT BUG IS IN THE SYSTEM, WHAT BUG?  
8       DID YOU FIND THE BUG?

9       A.   THE BUG THAT MR. --

10      Q.   DO YOU HAVE ANY PERSONAL KNOWLEDGE OF --

11               THE COURT:   JUST A MOMENT.   HE HASN'T FINISHED  
12      THE ANSWERED.

13      A.   THE BUG THAT WAS DESCRIBED IN TESTIMONY JUST A  
14      COUPLE OF DAYS AGO.

15      Q.   DO YOU HAVE ANY PERSONAL KNOWLEDGE THAT THERE IS A  
16      BUG IN THERE OR THE FACT IS THAT'S JUST THE WAY IT IS  
17      DESIGNED?

18      A.   WHEN I TRIED RUNNING THE PROGRAM, I GOT ERROR  
19      MESSAGES COMING UP ON THE SCREEN, THAT'S A PRETTY GOOD  
20      INDICATION THAT THERE WAS SOMETHING GOING ON.

21      Q.   RIGHT, OKAY.   AND APPARENTLY, SIR, THERE'S BEEN ALL  
22      THIS TESTIMONY THAT THIS PRODUCT HAS BEEN SOLD WIDELY  
23      THROUGHOUT THE U.S., DO YOU REMEMBER THAT?

24      A.   I HEARD TESTIMONY THAT OVER 50,000 COPIES HAD BEEN  
25      SOLD.

1 Q. AND NOT ONE OF THE BUGS WAS EVER FIXED?

2 A. I'VE GOT NO OPINION ON THAT. I HAD NOTHING TO DO  
3 WITH ADDRESSMATE PLUS OR ADDRESSMATE.

4 Q. YOU FIND THAT ODD, THAT IF IT WAS A BUG, MR. BLOCK  
5 KNEW ABOUT IT FROM DAY ON, THAT HE WOULD GO SELL 50,000  
6 OF THE COPIES OF THE THING AND NOT FIX THE QUOTE,  
7 "BUG"?

8 A. I'M NOT GOING TO SPECULATE AS TO WHY MR. BLOCK DID  
9 OR DID NOT FIX THE BUG.

10 Q. RIGHT, OKAY. COULD IT BE THAT THERE WASN'T A BUG  
11 TO BEGIN WITH, IT JUST DIDN'T WORK THAT WAY, THAT COULD  
12 BE A POSSIBILITY, RIGHT?

13 A. THAT WAS NOT WHAT HE TESTIFIED.

14 Q. IT COULD BE A POSSIBILITY, CORRECT?

15 A. I DON'T THINK IT IS A POSSIBILITY.

16 Q. LET'S GO TO ANOTHER ONE. THESE APPLE DATA  
17 DETECTORS. NOW, TO ADD SOME LEVITY, WE ALL KNOW THAT  
18 THEY ARE NOT DETECTING APPLES; RIGHT?

19 A. YOU PROBABLY COULD WRITE AN APPLE DETECTOR.

20 Q. I'M SURE YOU COULD.

21 NOW, THE APPLE DATA DETECTOR THAT YOU'RE RELYING  
22 UPON IS USED IN CONJUNCTION WITH CLARIS EMAIL, RIGHT?

23 A. THAT'S RIGHT. THE PRIOR ART I ANALYZED WAS CLARIS  
24 EMAILER WITH APPLE DATA DETECTORS INSTALLED.

25 Q. AND CLARIS EMAIL IS A SEPARATE AND DIFFERENT

1       PROGRAM FROM THE APPLE DATA DETECTOR PROGRAM; TRUE?

2       A.   YOU CANNOT INSTALL THE APPLE DATA DETECTORS, IF

3       THAT'S WHAT YOU MEAN.

4       Q.   THEY'RE SEPARATE PROGRAMS IS THE QUESTION; YES OR

5       NO?

6       A.   THE PROGRAM THAT I ANALYZED HAD THE TWO -- WAS

7       CLARIS EMAILER WITH APPLE DATA DETECTORS INSTALLED.

8       Q.   BUT THE QUESTION IS THEY ARE SEPARATE PROGRAMS,

9       APPLE DATA DETECTOR IS ONE PROGRAM, AND CLARIS EMAIL IS

10      ANOTHER; TRUE?

11      A.   APPLE DATA DETECTORS IS A SEPARATE PIECE OF CODE

12      YOU CAN DOWNLOAD, YES.

13      Q.   AND YOU COMBINED THEM BOTH FOR YOUR ANALYSIS OF

14      ANTICIPATION; TRUE?

15      A.   ONCE AGAIN, I DIDN'T COMBINE ANY REFERENCES.  I

16      USED A SYSTEM WHICH WAS CLARIS EMAILER WITH ADD

17      INSTALLED -- SORRY -- APPLE DATA DETECTORS INSTALLED.

18      Q.   AND, SIR, PRIOR TO YOUR OPINION ON THE APPLE DATA

19      DETECTOR PRODUCT, PRIOR TO YOUR ANALYSIS OF APPLE DATA

20      DETECTOR, DID YOU EVER CONSULT WITH MR. MILLER, THE

21      DESIGNER OF APPLE DATA DETECTOR, AS TO HOW IT WORKED?

22      A.   I DID NOT.

23      Q.   AND YOU'LL AGREE THAT AS WITH BLOCK, MR. MILLER IS

24      CERTAINLY MORE KNOWLEDGEABLE THAN YOU AS TO HOW THE

25      APPLE DATA DETECTOR THAT HE DESIGNED WORKED?

1 A. WITH THE GENERAL -- YES, HE SAID HE IMPLEMENTED  
2 SOME OF THE DETECTORS, IN FACT.

3 Q. AND WE ALL KNOW HERE THAT ONE OF THE ELEMENTS OF  
4 THE CLAIM IS THIS ANALYSIS STEP THAT OCCURS AFTER YOU  
5 PUSH THE BUTTON OR THE -- AFTER YOU PUSH THE ACTION  
6 ITEM ON THE MENU, CORRECT?

7 A. IT'S NOT AN ACTION ITEM ON A MENU. IT IS A RIGHT  
8 CLICK OR A CONTROL LEFT CLICK IN THIS CASE.

9 Q. BUT ALL SAID AND DONE, THE ANALYSIS STEP OCCURS  
10 AFTER YOU CLICK ON THE MENU ITEM?

11 A. THAT'S CORRECT.

12 Q. NOW -- AND THE FACT IS, SIR, -- NOW, YOU'VE HEARD  
13 MR. MILLER'S TESTIMONY HERE IN COURT, CORRECT?

14 A. I HAVE.

15 Q. AND YOU HEARD MY BROTHER INTRODUCE AND TALK TO HIM  
16 ABOUT THE FACT THAT HE HAS A PATENT ON THIS THING?

17 A. I DID.

18 Q. AND THAT HE ACTUALLY BUILT IT, SO TO SPEAK?

19 A. YES, SO TO SPEAK.

20 Q. AND YOU HEARD HIS TESTIMONY, DID YOU NOT, THAT IN  
21 EACH OF THE MENUS PROVIDED IN THE APPLE DATA DETECTOR,  
22 WHETHER IN THE PATENT OR IN THE PRODUCT, WHEN YOU CLICK  
23 UPON AN ACTION ITEM IN THAT MENU, THERE IS NO ANALYSIS,  
24 DID YOU HEAR THAT TESTIMONY?

25 A. I HEARD THAT. AND MY ANALYSIS DOESN'T RELY ON

1        THAT.

2        Q.    WELL, SIR, ISN'T WHAT THE ATLE'S -- MR. HEDLOY'S  
3        INVENTION IS ABOUT, IS CLICKING ONCE ON SOMETHING LIKE  
4        A MENU UPON A SINGLE ENTRY AND AFTER THAT, EVERYTHING  
5        AUTOMATICALLY HAPPENS, WOULDN'T YOU SAY THAT'S TRUE?

6        A.    WELL, THAT'S A PRETTY LOOSE DESCRIPTION OF CLAIM 1,  
7        I GUESS.

8        Q.    LET ME SHOW YOU IF I WILL -- COULD WE PUBLISH --  
9        THIS IS WHAT MR. SCHERKENBACH TOLD THE JURY ON THE  
10       OPENING. CAN WE PUBLISH THIS TO THE JURY, JUDGE?

11       THE COURT:    WHAT IS IT YOU'RE ASKING TO PUBLISH?

12       MR. HAYES:    IT'S JUST A TRANSCRIPT OF THE  
13       OPENING.

14       THE COURT:    NO.

15       MR. HAYES:    OKAY. LET ME JUST READ IT AND ASK  
16       YOU IF YOU AGREE WITH IT.

17       THE COURT:    I DON'T BELIEVE THIS IS AN OFFICIAL  
18       TRANSCRIPT, YOU'RE ASKING HIM FROM SOME NOTES YOU  
19       RECEIVED FROM THE COURT REPORTER.

20       MR. HAYES:    I GOT AN OFFICIAL TRANSCRIPT.

21       THE COURT:    I DON'T BELIEVE THAT'S -- WELL, LET  
22       ME ASK THE REPORTER.

23       MR. HAYES:    WELL, IT'S THE TRANSCRIPT.

24       THE COURT:    I WILL NOT DEBATE THE POINT IN FRONT  
25       OF THE JURY, MR. HAYES.

1 (CONFERENCE WITH COURT REPORTER)

2 THE COURT: IT'S NOT THE OFFICIAL TRANSCRIPT  
3 THAT YOU ARE READING FROM, BUT YOU CAN ASK HIM AND THE  
4 JURY CAN USE ITS MEMORY TO DETERMINE WHETHER HE SAID  
5 THIS, THESE THINGS OR NOT, BUT FIRST, LET'S FIND OUT  
6 WHETHER HE AGREES THAT HE SAID THEM. LET'S START WITH  
7 THAT.

8 Q. WERE YOU HERE AT THE OPENING?

9 A. YES, I WAS.

10 Q. AND DID YOU HEAR MR. SCHERKENBACH SAY WHAT THIS  
11 INVENTION IS ABOUT IS CLICKING ON SOMETHING LIKE A  
12 BUTTON OR A MENU UPON A SINGLE ENTRY ONCE AND AFTER  
13 THAT, EVERYTHING AUTOMATICALLY HAPPENS?

14 A. I DON'T REMEMBER PRECISELY HIS WORDS, BUT I THINK  
15 HE SAID SOMETHING LIKE THAT.

16 Q. DO YOU AGREE WITH THAT?

17 A. DO I AGREE WITH WHAT I JUST SAID TO MYSELF?

18 Q. NO, DO YOU AGREE WITH WHAT I JUST --

19 A. I SAID I BELIEVE THAT HE SAID SOMETHING LIKE THAT.

20 Q. BUT DO YOU AGREE WITH THE STATEMENT, THAT'S THE  
21 POINT?

22 A. AS I SAID, I AGREED WITH YOUR DESCRIPTION AS BEING  
23 A REASONABLE, LOOSE DESCRIPTION OF CLAIM 1.

24 Q. BUT ALL YOUR ANALYSIS ON THIS APPLE DATA DETECTOR  
25 OCCURS BEFORE THE MENU IS PULLED DOWN, DURING THE

1 PERIOD OF TIME WHEN THE MENU IS BEING PULLED DOWN, NOT  
2 AFTER WHEN YOU CLICK ON THE ACTION ITEM IN THE MENU,  
3 ISN'T THAT TRUE?

4 A. I EXPLAINED TO THE JURY YESTERDAY THIS IS ONE OF  
5 THOSE CASES WHERE YOU HAVE TO THINK OF JUST THE BASICS  
6 OF FIRST AND SECOND INFORMATION, AND MY ANALYSIS WHEN  
7 YOU DO THAT RIGHT CLICK, ANALYZES THE TEXT, THE TEXT  
8 SHOWS E-MAIL ADDRESSES, ETC., AND THEN IT LOOKS UP THE  
9 ACTIONS CORRESPONDING TO THOSE DETECTED TYPES AND  
10 DISPLAYS THEM. AND THAT'S THE SECOND INFORMATION AND  
11 THE ACT OF DISPLAYING IT. SO ALL OF THAT ANALYSIS  
12 TAKES PLACE BEFORE YOU DECIDE WHICH ACTION YOU WANT TO  
13 EXECUTE. SO MY ANALYSIS IS ALL BEFORE YOU CHOOSE WHICH  
14 ACTION YOU'RE INTERESTED IN.

15 Q. THANK YOU. THAT'S THE POINT.

16 NOW, SIR, LET'S TALK ABOUT, AND MAYBE I ASKED  
17 YOU THIS AND IF I DID, I'M SORRY TO REPEAT IT. BUT  
18 YOU'LL AGREE WITH ME THAT IF WE ANALYZE THIS APPLE DATA  
19 DETECTOR AFTER THE MENU, AND WE PUSH ON AN ACTION ITEM  
20 IN THE MENU, THERE'S NO ANALYSIS, ISN'T THAT TRUE?

21 A. YES, I HEARD DR. MILLER SAY THAT THERE IS NO  
22 ANALYSIS AFTER YOU SELECT ONE OF THOSE ACTIONS.

23 Q. NO , I UNDERSTAND THAT YOU HEARD HIM TESTIFY TO  
24 THAT. MY QUESTION IS, DO YOU AGREE WITH IT?

25 A. WELL, AS YOU SAID, HE'S THE -- HE KNOWS MORE ABOUT

1       HOW THOSE ACTIONS ARE IMPLEMENTED THAN I DO, SO I DO  
2       AGREE WITH WHAT HE SAID.

3       Q.   THANK YOU.  NOW, LET'S TALK ABOUT THIS OTHER PIECE  
4       OF PRIOR ART THAT WE HAVE, THE SPELLCHECKER STUFF.  I  
5       THINK IN YOUR DIRECT, YOU USED, WHEN YOU WERE TALKING  
6       ABOUT -- IS IT COREL SPELLCHECKER?

7       A.   THAT'S RIGHT, THE COREL WORD PERFECT SPELLCHECKER.

8       Q.   YOU USED IT INTERCHANGEABLY WITH MICROSOFT  
9       SPELLCHECKER, RIGHT?

10      A.   I MADE ONE SLIP OF THE TONGUE WHERE I SAID  
11      MICROSOFT, I BELIEVE.

12      Q.   A SLIP OF THE TONGUE.  NOW, THE FACT IS  
13      SPELLCHECKER TECHNOLOGY, AS OF HEDLOY'S PATENT, IS AS  
14      OLD AS THE HILLS, AND BY THAT I MEAN IT'S BEEN AROUND;  
15      TRUE?

16      A.   WELL, IN GENERAL, SPELLCHECKERS GO BACK TO THE  
17      '60S, THE PARTICULAR FORM OF SPELLCHECKERS IN COREL  
18      WORD PERFECT WERE MUCH MORE RECENT THAN THAT.

19      Q.   BUT WHATEVER -- EXCUSE ME, JUDGE.  THE SPELLCHECKER  
20      TECHNOLOGY, I BELIEVE, YOU INDICATED -- OR IT'S YOUR  
21      UNDERSTANDING, THAT ONE OF ORDINARY SKILL IN THE ART AS  
22      OF THE FILING DATE OF ATLE'S PATENT, '98, THAT IT WAS A  
23      FEATURE THAT WOULD BE KNOWN TO THOSE SKILLED IN THE ART  
24      AT THAT TIME; CORRECT?

25      A.   YES, I SAID IT WOULD BE SURPRISING IF A BACHELOR'S



1       IN COMPUTER SCIENCE STUDENT HADN'T USED A SPELLCHECKER.  
2       Q.   AND YOU WOULD BE SURPRISED IF ONE OF ORDINARY SKILL  
3       IN THE ART, SUCH AS A BACHELOR'S OF SCIENCE, DIDN'T  
4       KNOW ABOUT SPELLCHECKER, YOU WOULD LIKEWISE BE  
5       SURPRISED IF THE PATENT EXAMINER, THE EXPERT IN D.C.,  
6       DIDN'T KNOW ABOUT SPELLCHECKER; CORRECT?  
7       A.   THEY MAY HAVE HAD ONE ON THEIR DESKTOP MACHINE.  
8       Q.   YEAH.  AND, IN FACT, IF WE LOOK AT HEDLOY'S PATENT,  
9       SPELLCHECKER IS IN WORD, RIGHT?  
10      A.   YES, THERE'S A LOT OF TOOLS IN WORD.  
11      Q.   I DIDN'T ASK IF THERE IS A LOT OF TOOLS.  THE  
12      QUESTION IS, SPELLCHECKER IS IN WORD?  
13      A.   YES, SPELLCHECKER IS ONE OF THE TOOLS IN WORD.  
14      Q.   AND IF YOU LOOK, DO YOU HAVE THE PATENT THERE IN  
15      FRONT OF YOU?  LET ME GIVE YOU A COPY.  
16      A.   I PROBABLY HAVE IT ALL IN MY MEMORY AT THIS POINT.  
17      Q.   IT'S PX-1.  
18      A.   THANK YOU.  
19      Q.   AND LOOK AT, IF YOU WILL -- MAY I PUBLISH THIS?  
20                THE COURT:  WHAT EXHIBIT IS THIS?  
21                MR. HAYES:  IT'S EXHIBIT 1.  
22      Q.   THANK YOU, YOUR HONOR.  IF YOU LOOK AT COLUMN 1, DO  
23      YOU SEE THIS?  
24                ZOOM IT IN A LITTLE BIT.  YOU MISSED IT.  THERE  
25      YOU GO.

1           AND IN COLUMN 1, LINE 29 AND 30, WE SEE THAT  
2       MR. HEDLOY BRINGS TO THE ATTENTION THE EXISTENCE OF  
3       WORD AND WORD PERFECT; CORRECT?

4       A.   THAT'S CORRECT.

5       Q.   AND AS YOU INDICATED, YOU WOULD BE SURPRISED IF THE  
6       EXAMINER, AN EXPERT IN THE ART, WOULD NOT KNOW ABOUT  
7       THIS SPELLCHECKER TECHNOLOGY; CORRECT?

8       A.   I THINK IT'S PERFECTLY POSSIBLE THAT THEY HAD A  
9       SPELLCHECKER ON THEIR DESKTOP COMPUTER.

10      Q.   BUT IN ANY EVENT, THIS PATENT BY MR. HEDLOY WAS  
11      NEVER REJECTED BY THE PATENT OFFICE BASED ON  
12      SPELLCHECKER; CORRECT?

13      A.   THERE'S NO EVIDENCE THAT THE PATENT EXAMINER EVER  
14      CONSIDERED SPELL CHECKING AS A POTENTIAL PRIOR ART.

15      Q.   YOU CERTAINLY JUST ADMITTED THAT YOU WOULD BE  
16      SURPRISED IF HE DIDN'T KNOW ABOUT IT; CORRECT?

17      A.   I SAID IT WOULD BE -- IT WAS POSSIBLE THAT THEY HAD  
18      ONE ON THEIR DESKTOP COMPUTER, THAT THE EXAMINER HAD A  
19      SPELLCHECKER SOMEWHERE ON THEIR DESKTOP COMPUTER.

20      Q.   AND DESPITE THAT AND ITS WIDESPREAD USE, THE  
21      EXAMINER NEVER REJECTED THE PATENT BASED ON  
22      SPELLCHECKING; CORRECT?

23      A.   ONCE AGAIN, I SAID THAT I HAVE SEEN NO EVIDENCE  
24      THAT THEY EVER EXPLICITLY CONSIDERED SPELLCHECKING AS A  
25      PRIOR ART, WHICH MEANS TO GO THROUGH ALL THE ANALYSIS

1 OF WHAT SPELL CHECKING CONSISTS OF.

2 Q. SIR, NO EVIDENCE. DO YOU HAVE ANY PATENTS OF YOUR  
3 OWN?

4 A. I HAVE ONE.

5 Q. AND YOU KNOW HOW PATENTS ARE PROSECUTED?

6 A. I DO.

7 Q. AND YOU KNOW THE EXAMINER DOES A SEARCH?

8 A. I DO.

9 Q. AND IF HE FINDS A WHOLE BUNCH OF STUFF THAT HE  
10 DOESN'T EVEN THINK RELEVANT, HE DOESN'T EVEN PUT IT  
11 DOWN IN THE CONSIDERED LIST, CORRECT?

12 A. I -- I BELIEVE THAT IF A REFERENCE IS CONSIDERED  
13 TOTALLY IRRELEVANT, IT'S NOT PUT ON THE LIST OF  
14 CONSIDERED PRIOR ART.

15 Q. AND YOU JUST TOLD ME THAT YOU WOULD BE SURPRISED IF  
16 THE EXAMINER DIDN'T KNOW ABOUT THIS REFERENCE; TRUE?

17 A. WHICH REFERENCE?

18 Q. SPELLCHECKER.

19 A. OH, NO, WHAT I SAID WAS, I WOULDN'T BE SURPRISED IF  
20 THEY HAD SPELLCHECKER ON THEIR COMPUTER. THAT'S A VERY  
21 DIFFERENT THING FROM CONSIDERING IT AS PRIOR ART AND  
22 LOOKING AT THE DETAIL OF HOW THE SPELLCHECK WORKS.

23 Q. AND LET'S GO TO THE NEXT PATENT OR WHATEVER IS  
24 LEFT.

25 WHAT'S LEFT? LANG.

1           NOW, THE FINAL PIECE OF PRIOR ART IS THIS PATENT  
2   TO LANG; CORRECT?

3   A.   YES, THE ONE WE ARE REFERRING TO AS THE IBM PATENT.

4   Q.   RIGHT.  AND YOU UNDERSTAND THAT THE PATENT EXAMINER  
5   IS CONSIDERED AN EXPERT, IS THAT RIGHT?

6   A.   I UNDERSTAND IT'S THE PATENT EXAMINER'S JOB TO  
7   PROCESS AND APPROVE PATENTS.

8   Q.   YOU UNDERSTAND THAT HE DOES THIS DAY IN AND DAY  
9   OUT, THAT'S HIS JOB, TO KNOW WHAT'S IN THIS TECHNOLOGY?

10  A.   WHICH TECHNOLOGY ARE YOU REFERRING TO?

11  Q.   COMPUTERS.

12  A.   WELL, I UNDERSTAND THAT PATENT EXAMINERS DEAL WITH  
13  SOME SUB-FIELDS AND THEY HAVE TO DEAL WITH MANY, MANY  
14  PATENTS COVERING A WIDE RANGE OF AREAS.  IT'S ALSO MY  
15  UNDERSTANDING THAT PATENT EXAMINERS ARE NOT EXPERT IN  
16  EVERY POSSIBLE TECHNOLOGY.

17  Q.   YOU WOULD EXPECT, WOULDN'T YOU, A EXPERIENCED  
18  PATENT EXAMINER TO HAVE SOME AWARENESS OF WHAT IBM IS  
19  DOING IN A PARTICULAR FIELD?

20  A.   IBM IS THE LARGEST PATENT HOLDER, WITH ALL DUE  
21  DEFERENCE TO MICROSOFT, I THINK IBM IS BY FAR THE  
22  LARGEST PATENT HOLDER IN THE WORLD.  I THINK IT OWNS  
23  PROBABLY HUNDREDS OF THOUSANDS OF PATENTS.  I'M  
24  CONFIDENT THAT NO PATENT EXAMINER HAS KNOWLEDGE OF ALL  
25  THE PATENTS THAT IBM HAS.

1 Q. YOU HAVE NO PERSONAL KNOWLEDGE THAT THIS PATENT  
2 EXAMINER AS WITH SPELL CHECKING, SAW THE PATENT AND  
3 JUST CONSIDERED IT IRRELEVANT, DO YOU?

4 A. IT CERTAINLY IS NOT ON THE LIST OF PRIOR ART THAT  
5 WAS CONSIDERED, NOR WAS IT MENTIONED ANYWHERE IN THE  
6 PROSECUTION HISTORY, SO THERE'S NO EVIDENCE THAT IT WAS  
7 EVER CONSIDERED.

8 Q. WELL, WAIT A SECOND. YOU SAY IT WAS CONSIDERED AS  
9 YOU JUST TOLD ME, THAT ALL PATENTS THAT -- THE ONLY  
10 PATENTS THAT A PATENT EXAMINER PUTS ON THE PRIOR ART  
11 LIST ARE PRIOR ART PATENTS THAT HE CONSIDERS RELEVANT.  
12 THE ONES THAT HE LOOKS AT AND DOESN'T CONSIDER RELEVANT  
13 HE DOESN'T STICK THEM IN THERE, RIGHT?

14 A. WELL, IF YOU LOOK AT THE PATENTS THAT ARE CITED,  
15 FOR EXAMPLE ON THE HEDLOY PATENT, THEY HAVE A PRETTY  
16 BROAD DEFINITION OF WHAT'S RELEVANT. THERE'S LOTS OF  
17 PRIOR ART MENTIONED IN THAT PATENT, WHICH IS WAY FAR  
18 AFIELD FROM MR. HEDLOY'S INVENTION. SO IT IS MY  
19 UNDERSTANDING THAT THEY HAVE A PRETTY LOOSE DEFINITION  
20 OF HOW RELEVANT IT HAS TO BE TO GET INCLUDED.

21 Q. WELL, SIR, WITH RESPECT TO SPELLCHECKER, ARE YOU  
22 TELLING THE JURY THAT THE PATENT OFFICE MADE A MISTAKE  
23 AND FOR SOME REASON SHOULD HAVE PICKED UP SPELLCHECKER  
24 IN LANG?

25 A. SIR, ON SPELLCHECKER, I -- I CERTAINLY BELIEVE THAT

1 THE PATENT EXAMINER MADE A MISTAKE IN NOT CONSIDERING  
2 THE LANG PATENT, THE IBM PATENT. AND YES, I BELIEVE  
3 THAT THEY MADE AN ERROR IN NOT CONSIDERING THE SPELL  
4 CHECKING TECHNOLOGY EXPLICITLY AS A PRIOR ART PIECE.

5 Q. SO YOU SAY HEDLOY'S PATENT ISSUED PRESUMED VALID,  
6 BECAUSE OF THE MISTAKE THAT THE UNITED STATES PATENT  
7 EXAMINER MADE; IS THAT WHAT YOU JUST SAID?

8 A. I SAID THAT THEY DIDN'T CONSIDER THE PRIOR ART.  
9 THEY -- THEY -- IT WAS NOT THAT THEY CONSIDERED THE  
10 PRIOR ART AND MADE A MISTAKE, THEY JUST DIDN'T SEE THIS  
11 PRIOR ART, DIDN'T CONSIDER IT. SO THAT'S A VERY  
12 DIFFERENT THING THAN SAYING THEY MADE A MISTAKE.

13 Q. SO YOU JUST TOLD ME THAT YOU THOUGHT THEY MADE A  
14 MISTAKE BY NOT CITING SPELLCHECKER BECAUSE OBVIOUSLY  
15 THEY KNEW ABOUT IT?

16 A. I SAID THAT -- I -- I -- IT'S VERY HARD TO GET  
17 INSIDE A PERSON'S HEAD. BUT I CAN IMAGINE LOTS OF  
18 REASONS WHY THEY JUST MAY HAVE OVERLOOKED IT AS  
19 POTENTIAL PRIOR ART.

20 Q. SO IN OVERLOOKING IT YOU SAID, WHAT, THEY DIDN'T DO  
21 THEIR JOB CORRECTLY?

22 A. IT'S A VERY DIFFICULT JOB. THEY HAVE TO HANDLE  
23 LOTS OF PATENTS, THERE IS A LOT OF PRIOR ART --

24 Q. YOU SAID --

25 THE COURT: LET HIM FINISH HIS ANSWER, PLEASE.

1 MR. HAYES: I'M SORRY.

2 A. IT'S A VERY DIFFICULT JOB. I SAW THEM WORKING WHEN  
3 I WAS DOING THIS RESEARCH PROJECT WITH THEM, SO I HAVE  
4 EXPERIENCE OF HOW THEY DO THINGS. THEY HAVE TO DEAL  
5 WITH A LOT OF PATENTS AND EACH OF THOSE PATENTS HAS  
6 PILES OF POTENTIAL PRIOR ART. THEIR SEARCH TOOLS WERE  
7 INADEQUATE AT THAT TIME. THAT'S WHY I WAS DOING THAT  
8 RESEARCH PROJECT, TO DEVELOP BETTER SEARCH TOOLS. THEY  
9 HAD A HARD TIME FINDING THE RIGHT PRIOR ART. SO IT'S  
10 NOT -- I'M NOT CRITICIZING THEM FOR DOING THE BEST THEY  
11 CAN UNDER THE CIRCUMSTANCE.

12 Q. YOU'RE NOT?

13 A. NO, I'M SAYING THEIR TOOLS WERE INADEQUATE AT THE  
14 TIME.

15 Q. SIR, THE PATENT EXAMINER DIDN'T NEED ONE OF YOUR  
16 SPECIAL TOOLS TO FIGURE OUT THAT SPELLCHECKER IS PRIOR  
17 ART, YOU TOLD ME THAT YOU WOULD BE SURPRISED IF AN  
18 ORDINARY PERSON DIDN'T KNOW ABOUT IT?

19 A. WELL --

20 Q. IS THAT CORRECT?

21 A. I WAS JUST GOING TO SAY THAT THE THINGS THAT WE  
22 HAVE ON OUR -- WE USE IN OUR DAY-TO-DAY LIFE SOMETIMES  
23 WE DON'T THINK ABOUT THEM. SO IT IS QUITE CONCEIVABLE,  
24 SINCE YOU ARE ASKING ME TO SPECULATE ABOUT ALL OF THIS,  
25 BECAUSE IT IS SOMETHING THAT THEY SAW ON A DAY-TO-DAY

1 BASIS, THEY DIDN'T SORT OF THINK -- MAKE THE JUMP TO  
2 THINKING ABOUT IT AND SAY, OKAY, THIS IS A POTENTIAL  
3 PRIOR ART, THIS IS SOMETHING LIKE A COFFEE CUP I HAVE  
4 ON MY TABLE.

5 Q. THAT'S THE MISTAKE YOU SAY THE PATENT OFFICE MADE  
6 VIS-A-VIS SPELLCHECKER, CORRECT?

7 A. I JUST SAID THAT THEY OVERLOOKED THE POSSIBILITY OF  
8 CONSIDERING SPELL CHECKING AS A PRIOR ART FOR THIS  
9 PATENT.

10 Q. AND IF WE LOOK AT LANG, BY THE WAY, THAT'S JUST A  
11 PARTICULAR TYPE OF SPELLCHECKER; TRUE?

12 A. THAT'S NOT TRUE.

13 Q. THAT'S NOT TRUE?

14 A. THAT'S CORRECT.

15 Q. I THOUGHT YOU SAID IT'S CHECKING OR COMPARING WORDS  
16 THAT SOUND ALIKE --

17 A. IT'S --

18 Q. -- DID I HEAR "KNIFE" OR SOMETHING LIKE THAT?

19 A. YOU KNOW, WHEN WE'RE CONSIDERING PATENTS, YOU HAVE  
20 TO BE PRECISE. AND WHAT THE IBM PATENT IS TALKING  
21 ABOUT IS IDENTIFYING THESE CONFUSABLE WORDS, WORDS THAT  
22 CAN BE CONFUSED WITH OTHER WORDS AND HELPING THE USER  
23 DECIDE WHICH WORD DID YOU REALLY MEAN.

24 EACH OF THOSE WORDS IN THAT EXAMPLE THAT I  
25 SHOWED YOU YESTERDAY WERE ACTUALLY SPELLED CORRECTLY,



1       THEY WERE JUST USED IN THE WRONG CONTEXT.  AND SO IT'S  
2       DETECTING A VERY SPECIAL SORT OF WORD USE AND THEN  
3       HELPING THE USER BY DISPLAYING SOME POSSIBLE  
4       ALTERNATIVES AND THEIR DEFINITION.

5       Q.  YOU DON'T THINK IT'S SIMILAR AT ALL TO  
6       SPELLCHECKER?

7       A.  WELL, AT SOME ABSTRACT LEVEL, YES.

8       Q.  NOW IN LANG -- SIR, WHEN YOU SAY, FOR EXAMPLE,  
9       SEARCH A DATABASE, SOMETHING TO THAT EFFECT, SEARCH IS  
10      A COMMON WORD USED IN THE INDUSTRY TO DESCRIBE, IF YOU  
11      ARE GOING TO SEARCH A DATABASE, RIGHT?

12      A.  LOTS OF PEOPLE TALK ABOUT SEARCHING IN DATABASES,  
13      YES.

14      Q.  AND IF WE -- AND SEARCHING IS AN ELEMENT OF THE  
15      CLAIMED INVENTION, CORRECT?

16      A.  YES, I JUST WANT TO BE PRECISE ABOUT EXACTLY WHICH  
17      ELEMENT.  SO, YES, IN THE THIRD -- LET'S SEE THERE,  
18      ONE, TWO, THREE, FOUR, FIFTH CLAIM LIMITATION, IT TALKS  
19      ABOUT IF THE FIRST INFORMATION IS CONTAINED IN THE  
20      DOCUMENT SEARCHING USING THE RECORD RETRIEVAL PROGRAM  
21      THE INFORMATION SOURCE FOR SECOND INFORMATION.

22      Q.  AND YOU'VE REVIEWED THE LANG PATENT BEFORE YOU CAME  
23      HERE TODAY; CORRECT?

24      A.  YES, I DID.

25      Q.  AND THE WORD "SEARCH" IS FOUND NOWHERE IN THAT

1       PATENT; CORRECT?

2       A.   IT TALKS ABOUT A RECORD RETRIEVAL PROGRAM.  IT

3       SHOWS THE RECORD RETRIEVAL PROGRAM --

4       Q.   EXCUSE ME, THE WORD SEARCH IS FOUND NOWHERE IN THAT

5       PATENT, ISN'T THAT TRUE?

6       A.   I WOULD HAVE TO GO AND DO A SCAN TO ABSOLUTELY

7       CONFIRM THAT THAT WAS TRUE.

8       Q.   WELL, TURN TO PAGE 427 OF YOUR DEPOSITION, PLEASE.

9       A.   THIS IS THE SECOND DEPOSITION, RIGHT?

10      Q.   RIGHT.  QUESTION, LINE 18.

11      A.   YES.

12      Q.   QUESTION WAS, "BUT IT DOESN'T SAY THAT IT'S

13      SEARCHING EITHER ONE OF THE WORD LISTS OR THE PARAMETER

14      LISTS OR THE DEFINITION LIST?"  ANSWER -- TALKING ABOUT

15      THE LANG PATENT -- COULD YOU READ THE JURY YOUR ANSWER

16      GIVEN UNDER OATH IN THAT DEPOSITION?

17      A.   IT SAYS, "IT DOES NOT USE THE WORD SEARCH."

18      Q.   THANK YOU.  NOW, SIR, YOU RELIED ON, AMONGST OTHER

19      THINGS, A MANUAL, IS THAT RIGHT?

20      A.   IN THE CASE OF ADDRESSMATE, THAT WAS THE PRIMARY

21      SOURCE FOR MY ANALYSIS, YES.

22      Q.   AND WHEN WE SAW THE APPLE DATA DETECTOR PRODUCT

23      COME OUT OF THE BOX, THERE WERE MANUALS IN IT; CORRECT?

24      A.   I DON'T BELIEVE SO.  I THINK THAT WAS THE COREL

25      WORD PERFECT PRODUCT.

1 Q. SO THE MANUAL IS IN THAT ONE?

2 A. THAT'S CORRECT.

3 Q. SO YOU RELIED ON LANG WHICH IS A PATENT, CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND YOU UNDERSTAND THAT THERE IS A PROCEDURE IN THE  
6 UNITED STATES PATENT OFFICE CALLED REEXAMINATION, WHERE  
7 MICROSOFT COULD GIVE THIS PRIOR ART STRAIGHT BACK TO  
8 THIS EXAMINER AND HAVE HIM DETERMINE WHETHER OR NOT  
9 THESE CLAIMS ARE ANTICIPATED?

10 MR. SCHERKENBACH: OBJECTION, YOUR HONOR.

11 THE COURT: GROUND?

12 MR. SCHERKENBACH: CALLS FOR A LEGAL CONCLUSION,  
13 IT'S ARGUMENTATIVE.

14 MR. HAYES: I JUST SAID --

15 THE COURT: READ THE QUESTION BACK, PLEASE.

16 (QUESTION READ BACK)

17 THE COURT: AND YOUR GROUND IS IT CALLS FOR A  
18 LEGAL CONCLUSION?

19 MR. SCHERKENBACH: AND IS ARGUMENTATIVE, YES.

20 THE COURT: APPROACH THE SIDE BAR, COUNSEL.

21 (BENCH CONFERENCE ON THE RECORD)

22 THE COURT: THIS HAS GOTTEN SO FAR OFF COURSE, I  
23 DON'T KNOW REALLY WHAT TO SAY AT THIS POINT. I THINK  
24 WHAT'S HAPPENED HERE IS WE'VE NOW GOTTEN INTO  
25 PROSECUTION HISTORY, WHICH IS WHAT I THOUGHT YOU WANTED

1 TO KEEP OUT OF THIS. WE NOW ARE GOING INTO PROSECUTION  
2 HISTORY, WHICH HAS OPENED A BIG DOOR, AND I DON'T KNOW  
3 -- I ASSUME YOU HAVE TACTICAL REASONS FOR NOT OBJECTING  
4 TO ABOUT 95 PERCENT OF WHAT WE'VE HEARING, I'M NOT  
5 GOING TO INQUIRE INTO THAT, BUT I THINK IF THAT'S  
6 WHAT'S GOING ON HERE, THAT THIS QUESTION WOULD NOT BE  
7 OBJECTIONABLE ON THE GROUND IT'S ARGUMENTATIVE OR THAT  
8 IT CALLS FOR A LEGAL CONCLUSION. IT COULD BE ENTIRELY  
9 -- IT COULD BE SUBJECT TO AN OBJECTION ON A LOT OF  
10 OTHER GROUNDS, BUT I THINK WE HAVE LONG PASSED THAT  
11 POINT, SO I'M GOING TO OVERRULE THE OBJECTION. AND I  
12 THINK WE'RE NOW TAKING A TURN, WHEREAS, IMPROPER AS IT  
13 MIGHT OTHERWISE HAVE BEEN, WE'RE GOING TO BE TALKING A  
14 LOT ABOUT PROSECUTION HISTORY, BOTH IN THE REMAINDER OF  
15 YOUR CROSS-EXAMINATION AND THE REDIRECT.

16 MR. HAYES: WHERE DID YOU THINK I ASKED HIM  
17 ABOUT PROSECUTION HISTORY?

18 THE COURT: ALL OVER THE PLACE.

19 (BENCH CONFERENCE OFF THE RECORD)

20 THE COURT: THE OBJECTION IS OVERRULED.

21 DO YOU REMEMBER THE QUESTION, DR. CROFT?

22 THE WITNESS: YES, I DO, YOUR HONOR.

23 A. I GUESS I'M NOT FAMILIAR WITH THAT.

24 Q. WHAT?

25 A. I'M NOT FAMILIAR WITH THAT PROCESS.

1 Q. ARE YOU AWARE IF MICROSOFT HAS EVER FILED A  
2 PETITION FOR REEXAMINATION?

3 A. NO, I'M NOT AWARE OF THAT.

4 Q. THANK YOU.

5 MR. HAYES: NO FURTHER QUESTIONS.

6 THE COURT: I THINK WE'LL STOP THERE.

7 MR. SCHERKENBACH, YOU CAN HAVE YOUR REDIRECT AFTER THE  
8 LUNCHEON RECESS. MEMBERS OF THE JURY MAY BE EXCUSED.

9 (JURY EXCUSED)

10 THE WITNESS: YOUR HONOR, AM I ALLOWED TO TALK  
11 TO PEOPLE NOW?

12 THE COURT: YES, YOU CAN. YOUR  
13 CROSS-EXAMINATION IS OVER, YOU CAN TALK TO PEOPLE.

14 (WITNESS EXCUSED)

15 THE COURT: COURT WILL BE IN RECESS UNTIL 2:00.

16 (LUNCH 12:30 TO 2:18)

17 THE COURT: BRING THE JURY IN, PLEASE.

18 COUNSEL, WE'RE NOT GOING TO TAKE ANY AFTERNOON  
19 RECESS BECAUSE WE WERE LATE GETTING STARTED SO PLAN  
20 ACCORDINGLY.

21 PLEASE BE SEATED, LADIES AND GENTLEMEN.

22 (JURY PRESENT)

23 THE COURT: BEFORE WE RESUME, I FEEL I OWE YOU  
24 AN EXPLANATION HERE AS TO WHY WE ARE LATE GETTING  
25 STARTED. IT'S BECAUSE OF ME. I DON'T WANT YOU TO

1 THINK THAT THESE LENGTHY LUNCH HOURS WE TAKE WE ARE  
2 SPENDING ALL OUR TIME EATING, AT LEAST I'M NOT; I DON'T  
3 KNOW ABOUT THE LAWYERS. I'M TRYING TO DO OTHER THINGS  
4 AND ONE OF THE OTHER THINGS RAN A LITTLE OVER, THAT'S  
5 WHY WE'RE LATE. WE'LL SKIP THE AFTERNOON RECESS TO  
6 MAKE UP FOR THAT AND WE'LL ADJOURN A FEW MINUTES  
7 EARLIER SO THAT I THINK THAT'S THE MOST EFFICIENT WAY  
8 TO PROCEED. MR. SCHERKENBACH.

9 MR. SCHERKENBACH: THANK YOU, YOUR HONOR. WE  
10 HAVE NO QUESTIONS OF DR. CROFT ON REDIRECT, YOUR HONOR.

11 THE COURT: YOU MAY STEP DOWN, DR. CROFT.

12 MR. SCHERKENBACH: AND AT THIS TIME, YOUR HONOR,  
13 WE HAVE NO FURTHER WITNESSES WE WISH TO CALL AND  
14 MICROSOFT RESTS ITS DEFENSE.

15 THE COURT: MR. HAYES, DO YOU HAVE ANY REBUTTAL  
16 EVIDENCE?

17 MR. HAYES: YES, YOUR HONOR. WE WOULD LIKE TO  
18 CALL MR. KLAUSNER.

19 THE COURT: OKAY. THIS IS REBUTTAL EVIDENCE  
20 WE'RE TALKING ABOUT NOW?

21 MR. HAYES: SAY AGAIN?

22 THE COURT: THIS IS REBUTTAL EVIDENCE; IS THAT  
23 RIGHT?

24 MR. HAYES: YES, SIR.

25 THE COURT: MR. KLAUSNER, WOULD YOU RETURN TO

1 THE STAND, PLEASE.

2 PLAINTIFF'S REBUTTAL WITNESS, DAVID KLAUSNER, SOWRN

3 THE CLERK: PLEASE STATE AND SPELL YOUR NAME.

4 THE WITNESS: DAVID KLAUSNER.

5 DIRECT EXAMINATION

6 BY MR. FEHER:

7 Q. WOULD YOU STATE YOUR NAME PLEASE, MR. KLAUSNER.

8 A. DAVID KLAUSNER.

9 MR. SCHERKENBACH: EXCUSE ME, YOUR HONOR, BEFORE  
10 WE GET STARTED, I NOTICE MR. KLAUSNER BROUGHT A NUMBER  
11 OF MATERIALS UP TO THE STAND WITH HIM, A LEGAL PAD,  
12 PAPERS AND THINGS. I'D LIKE AN IDENTIFICATION OF THOSE  
13 BEFORE THE EXAMINATION BEGINS, PLEASE.

14 THE COURT: WELL, YOU CAN INQUIRE ON  
15 CROSS-EXAMINATION OR IF HE REFERS TO THEM, THEN WE CAN  
16 IDENTIFY THEM.

17 MR. SCHERKENBACH: ALL RIGHT, THANK YOU.

18 Q. GOOD AFTERNOON, MR. KLAUSNER.

19 A. GOOD AFTERNOON.

20 Q. WERE YOU HERE FOR THE TESTIMONY OF MR. CROFT  
21 YESTERDAY AND TODAY?

22 A. YES.

23 Q. AND DO YOU AGREE WITH THE OPINIONS THAT HE  
24 EXPRESSED?

25 A. NO.

1 Q. I'M GOING TO ASK YOU ABOUT SOME OF MR. CROFT'S  
2 OPINIONS. LET'S TURN BACK TO THE ISSUE OF INFRINGEMENT  
3 FOR JUST A LITTLE BIT. NOW, WERE YOU HERE FOR THE  
4 TESTIMONY OF MR. REYNAR A COUPLE OF DAYS AGO?

5 A. YES.

6 Q. AND DID YOU HEAR THE TESTIMONY OF MR. REYNAR THAT  
7 HE BELIEVES THE SMART TAGS TECHNOLOGY OF THE ACCUSED  
8 PRODUCT, THAT IN THAT NO ANALYSIS OCCURS AFTER THE USER  
9 SELECTS A MENU ITEM FOR THE SMART TAG?

10 A. YES, I HEARD HIM SAY THAT.

11 Q. NOW, DO YOU AGREE WITH THAT?

12 A. NO.

13 Q. DID YOU HEAR MR. REYNAR WHEN HE TESTIFIED THAT THE  
14 SOURCE CODE PORTIONS THAT YOU IDENTIFIED IN YOUR CLAIM  
15 CHART, LIKE THE FSCANGETDATA AND THE HRGETTAGGEDDATA,  
16 DO NOT DO ANY ANALYSIS AFTER THE SELECTION OF THE MENU  
17 ITEM?

18 A. I HEARD HIS TESTIMONY.

19 Q. IS MR. REYNAR CORRECT ABOUT THAT?

20 A. HE IS NOT.

21 Q. DOES THE SMART TAGS TECHNOLOGY ANALYZE THE DOCUMENT  
22 TO DETERMINE IF THE FIRST INFORMATION IS CONTAINED IN  
23 THE DOCUMENT, AFTER THE PURPLE DOTS HAVE APPEARED AND  
24 AFTER THE SINGLE ENTRY OF THE EXECUTE COMMAND OCCURS,  
25 WHEN THE USER SELECTS THE MENU ITEM?



1 A. IT DOES.

2 Q. CAN YOU SHOW US SOME SPECIFIC EXAMPLES OF THAT  
3 ANALYSIS AT THAT TIME FROM THE ROUTINES OF THE SOURCE  
4 CODE?

5 A. YES. LET'S LOOK FIRST AT HRGETTAGGEDDATA. I'M  
6 GOING TO ASK FOR A PARTICULAR EXHIBIT, IN THIS CASE IT  
7 WOULD BE EXHIBIT 372. AND I'LL ALSO NEED EXHIBIT 252.  
8 AND EXHIBIT 372 IS FOR HRGETTAGGEDDATA. AND EXHIBIT  
9 252 IS FOR FSCANGETDATA.

10 I'M FIRST GOING TO LOOK AT HRGETTAGGEDDATA AND  
11 HOPEFULLY IF THAT CAN COME UP ONTO THE ELMO.

12 Q. AND THAT'S EXHIBIT 372?

13 A. THAT'S EXHIBIT 327 TAB E, LIKE --

14 Q. EDWARD?

15 A. -- ECHO.

16 Q. AND WHAT PAGE ARE YOU ON?

17 A. I'M ON PAGE 1. THE NAME OF THIS ROUTINE IS  
18 INSERTWORD.CPP.

19 MR. FEHER: YOUR HONOR, MAY WE HAVE THIS  
20 PUBLISHED TO THE JURY, IT'S IN EVIDENCE.

21 A. THE ROUTINE BEGINS ON PAGE -- I'M SORRY, ON LINE  
22 36, RIGHT THERE, THERE IS THE HRGETTAGGEDDATA. AND IF  
23 WE GO TO THE NEXT PAGE IS THE ACTUAL SOURCE CODE FOR  
24 HRGETTAGGEDDATA. IF WE LOOK DOWN TO ABOUT LINE 69  
25 THROUGH LINE 87, LET'S TAKE A LOOK AT THAT.

1           NOW, I TESTIFIED ON THE FIRST DAY THAT THE  
2       HRGETTAGGEDDATA ANALYZES THE TEXT THAT'S PASSED TO THE  
3       SMART TAGS. I'M GOING TO SHOW YOU HOW THE INFORMATION  
4       SUCH AS THE PERSON NAME, MIDDLE NAME, TITLE, NAME  
5       SUFFIX, ALL OF THAT MATERIAL AS YOU SEE HERE ON TO THE  
6       NEXT PAGE, INCLUDING YEAR, MONTH, DAY, HOUR, MINUTE AND  
7       STREET ARE ALL PASSED.

8       Q.   PHONE NUMBER AS WELL?

9       A.   AND PHONE NUMBER. LET'S TAKE A LOOK AT LINE 94.  
10      RIGHT HERE AT LINE 94, THIS IS THE OTHER OF THE TWO  
11      ROUTINES THAT MR. REYNAR DENIED DOES ANALYSIS. BUT, IN  
12      FACT, THIS DOES. AND I'LL SHOW YOU. I'M GOING TO GO  
13      TEMPORARILY TO THAT ROUTINE AND THAT'S AT EXHIBIT 252.  
14      SO WHAT WE JUST LOOKED AT IS LINE 94 CALLS, AS I  
15      EXPLAINED TO THE JURY EARLIER, LINE 94 IS A CALL TO  
16      THIS OTHER THING CALLED FSCANGETDATA.

17           WHAT DOES FSCANGETDATA DO? AND LOOK AT EXHIBIT  
18      252.

19      Q.   WHAT PAGE, PLEASE?

20      A.   PARTICULARLY LINE 329 ON PAGE 9. THIS IS THE --  
21      THESE ARE THE COMMENTS HERE IN FRONT OF THE ACTUAL  
22      ROUTINE, THE ACTUAL SOURCE CODE. AND LOOK WHAT IT  
23      SAYS. FIRST THING IT SAYS ON LINE 329 IS "SCANS THE  
24      WORD."

25           MR. FEHER: YOUR HONOR, MAY WE HAVE THIS

1 PUBLISHED? IT'S IN EVIDENCE.

2 THE COURT: IS THIS A DIFFERENT DOCUMENT HE'S  
3 ON?

4 MR. FEHER: A DIFFERENT DOCUMENT, YES, YOUR  
5 HONOR.

6 THE COURT: WHAT DOCUMENT IS THIS?

7 THE WITNESS: THIS IS EXHIBIT 252.

8 MR. FEHER: 252. AND YOUR HONOR, WE MAY BE  
9 FLIPPING BETWEEN ALL OF THESE, BUT THEY ARE ALL IN  
10 EVIDENCE.

11 Q. CONTINUE, MR. KLAUSNER.

12 A. THANK YOU. AND THIS IS PART OF THE CODE THAT I  
13 HIGHLIGHTED IN RED OVER THE LUNCH BREAK WHEN I FIRST  
14 TESTIFIED FOR THE JURY, I THINK LAST WEEK. THIS CODE  
15 SCANS WORDS, IN OTHER WORDS, IT SCANS THE TEXT THAT THE  
16 USER HAS TYPED IN. IT ALSO, AS YOU SEE ON THE NEXT  
17 LINE, LOOKS AT THE CURRENT SMART TAGS COLLECTION, SCANS  
18 THAT. SO IT ANALYZES ALL OF THE SMART TAGS THAT ARE  
19 CURRENTLY COLLECTED IN THE DOCUMENT. AND BY THE WAY,  
20 ALL OF THIS CODE, HRGETTAGGEDDATA AND FSCANGETDATA  
21 EXECUTE AFTER THE USER HAS CHOSEN IN THE ACCUSED  
22 PRODUCTS THE MENU ITEM FOR AN ACTION.

23 GOING ON, LINE 331. ALL PARAGRAPH COLLECTIONS  
24 STARTING WITH THE TOP MOST ADJACENT PARAGRAPH, IF WE  
25 CAN SHOOT THAT DOWN A LITTLE BIT. SO ALL PARAGRAPH

1       COLLECTIONS STARTING WITH THE TOPMOST ADJACENT  
2       PARAGRAPH COLLECTION ARE ALSO SCANNED.  AND SCANNING IS  
3       ANALYZING.  WHAT DOES IT SAY A COUPLE OF LINES AFTER  
4       THIS?  LET'S GO ON TO THE NEXT PAGE.

5               I THINK YOU SKIPPED A PAGE, THERE IS A BACK  
6       SIDE.

7               MR. FEHER:  I DID.  I APOLOGIZE.

8       A.  LOOKING NOW AT LINE 335, MULTIPARAGRAPH TAGS CAN BE  
9       PARSED TOGETHER.  PARSING IS SCANNING.  THIS CODE  
10      PARSES.  AND HOW DOES IT DO THAT?  LET'S TAKE A LOOK  
11      RIGHT HERE.

12      Q.  MR. KLAUSNER, WHAT DID YOU SAY PARSING WAS?

13      A.  SCANNING.  I'M SORRY.  PARSING IS SCANNING AND  
14      SCANNING IS ANALYZING; THEY ARE ALL THE SAME, YOU PARSE  
15      CODE, YOU SCAN IT, YOU ANALYZE IT.  FOR EXAMPLE, IN  
16      ORDER TO LOOK AT AND MAKE SENSE OF SOME TEXTS TO  
17      DETERMINE WHERE THE FIRST NAME IS VERSUS THE LAST NAME,  
18      YOU HAVE TO FIND THE WHITE SPACE, THEY HAVE TO FIND THE  
19      BLANK IN BETWEEN THE TWO NAMES, AND THAT'S HOW IT  
20      WORKS.  THAT'S CALLED PARSING, YOU GO A CHARACTER AT A  
21      TIME THROUGH THE NAME UNTIL YOU FIND THE SPACE, THEN  
22      YOU KNOW YOU ARE AT THE END OF THAT FIRST NAME; THEN  
23      YOU GO A CHARACTER AT A TIME TO FIND IF THERE IS A  
24      MIDDLE NAME AND THEN A CHARACTER AT A TIME TO SEE IF  
25      THERE IS A LAST NAME.

1 Q. DO THE WHITE SPACES HAVE ANY OTHER SIGNIFICANCE  
2 WITH RESPECT TO FORMATTING?

3 A. YES, THERE WERE MANY WAYS TO END THE NAME. FOR  
4 EXAMPLE, YOU CAN END THE NAME WITH A COMMA, YOU CAN END  
5 A NAME WITH A CARRIAGE RETURN, A NEW PARAGRAPH OR A NEW  
6 LINE. YOU CAN END THE NAME WITH A SLASH, WITH AN OPEN  
7 PARENTHESES. THESE ARE ALL CALLED TERMINATORS OR  
8 SEPARATORS FOR THE PARSING.

9 NOW, NOTICE HERE, THERE'S WHAT'S CALLED A LOOP,  
10 THE PROGRAM WILL ACTUALLY LOOP THROUGH ADJACENT  
11 PARAGRAPH STRINGS. WHAT DOES THAT MEAN? THAT MEANS  
12 THAT AS A RESULT OF MY DOING THE SINGLE ENTRY ON THE  
13 EXECUTE COMMAND, THAT INITIATES A RECORD RETRIEVAL  
14 PROGRAM AND THEREFORE GOES TO THE NEXT STEP, ELEMENT D,  
15 THAT'S ANALYZING THE DOCUMENT. IT GOES -- THIS ROUTINE  
16 GOES AND LOOKS AT THE PARAGRAPH THAT I'M CURRENTLY ON,  
17 THE LINE I'M ON, AND THEN LOOKS BACKWARDS, ALSO  
18 ANALYZING FOR SMART TAGS AND THEN LOOKS FORWARD AND  
19 ALSO ANALYZING FOR SMART TAGS. JUST LIKE I SHOWED THE  
20 JURY THE OTHER DAY WHEN I ACTUALLY DEMONSTRATED THE  
21 PRODUCT, AND IT WENT BACK AND FOUND THE DATE. IT WENT  
22 FORWARD AND FOUND THE TIME, AND CREATED A RECORD FOR A  
23 MEETING. THIS IS THE CODE THAT DOES IT. AND THIS IS  
24 DONE AFTER THE SINGLE ENTRY OF THE EXECUTE COMMAND AS  
25 REQUIRED BY THE PATENT.

1           LET'S GO BACK NOW -- SO THIS IS THE ROUTINE  
2           CALLED FSCANGETDATA THAT DR. REYNAR TESTIFIED DOES NOT  
3           DO ANALYSIS; IT DOES DO ANALYSIS. LET'S GO BACK FOR A  
4           MOMENT TO THE HRGETTAGGEDDATA, THAT'S EXHIBIT 372, TAB  
5           E.

6           Q.   WHAT LINE NUMBER, PLEASE?

7           A.   BACK TO LINE 94. SO WHEN THE FSCANGETDATA ROUTINE  
8           IS FINISHED LOOKING AT THE PARAGRAPHS BEFORE AND THE  
9           PARAGRAPHS AFTER DOING THE SCANNING, THE PARSING  
10          THROUGH THOSE PARAGRAPHS TO LOOK FOR SMART TAGS, WE GO  
11          BEYOND LINE 94, WE GO DOWNWARDS, AND THE CODE CONTINUES  
12          TO EXECUTE. SO WHAT FSCANGETDATA HAS DONE FOR US AT  
13          THIS POINT IS IT HAS EXTRACTED ALL OF THE SMART TAGS  
14          THAT ARE FOUND BOTH ON THE LINE THAT WE WERE LOOKING AT  
15          AS WELL AS THE LINES BEFORE AND THE LINES AFTER, AND  
16          IT'S TAKEN THAT INFORMATION AND PUT IT INTO CUBBYHOLES,  
17          LIKE -- LIKE MAILBOXES, AN ARRAY OF STUFF WHERE WE CAN  
18          PICK OUT WHAT'S IN BOX, 1, 2, 3, 4, WHEN WE NEED IT.

19          AND WHAT IS ACTUALLY DONE? THE INFORMATION FROM  
20          THE SMART TAG, FROM THE METADATA, THAT WAS STORED AND  
21          RETRIEVED AS A RESULT OF THE ANALYSIS DONE BY LINE 94,  
22          IS NOW PLACED INTO -- LOOK WHAT IT SAYS, PERSON NAME,  
23          MIDDLE NAME, TITLE, SUFFIX, ADDRESS, PHONE. AND NOT  
24          ONLY THAT, IT NOW GOES ON TO LOOK AT EACH ONE OF THOSE  
25          THINGS THAT IT FOUND. IN OTHER WORDS, TO ANALYZE THEM.

1           LOOK AT STATEMENT 107. 107 SAYS, IF THERE IS A  
2       YEAR IN THE DOCUMENT, THEN CONVERT -- IN OTHER WORDS,  
3       EXTRACT THE YEAR, CONVERT IT TO A NUMBER. IT ALSO IN  
4       LINE 112 SAYS, IF THERE IS A MONTH FOUND IN THE  
5       DOCUMENT, DO SIMILAR. THIS IS ANALYSIS. LET'S GO ON  
6       --

7       Q. MR. KLAUSNER, WOULD YOU SPECIFICALLY POINT TO THE  
8       "IF" STATEMENTS THAT YOU WERE REFERRING TO THERE?

9       A. THE FIRST "IF" STATEMENT IS ON LINE 107. THE NEXT  
10      "IF" STATEMENT IS ON LINE 112, AND THE SECOND ONE IS  
11      FOR THE MONTH. LET'S GO ON TO THE NEXT PAGE.

12           THE COURT: MR. FEHER, LET'S DO THIS BY  
13      QUESTION. WHAT IS THE PENDING QUESTION?

14           MR. FEHER: OTHER EXAMPLES OF ANALYSIS, YOUR  
15      HONOR, I'M ASKING HIM TO RUN THROUGH SOME EXAMPLES.

16           THE COURT: ALL RIGHT.

17      A. ON THE NEXT PAGE AT THE TOP OF THE NEXT PAGE, WE'RE  
18      LOOKING TO SEE IF THE DAY WITHIN THE DATE ON LINE 117,  
19      IF THE FIRST INFORMATION IS FOUND IN THE DOCUMENT, IS  
20      THERE A DAY. AND IF THERE IS, THEN EXTRACT, IN OTHER  
21      WORDS, ANALYZE THAT DATA, AND PUT IT INTO SOME VALUE IN  
22      LINE 119.

23           AND NOT TO BELABOR THE POINT, BUT TO GO ON JUST  
24      BRIEFLY, LINE 123 CHECKS TO SEE IF THERE'S AN HOUR AS  
25      PART OF THE TIME. LINE 128 CHECKS TO SEE IF THERE IS A

1       MINUTE VALUE AS PART OF THE MINUTES, LIKE 03:45 P.M.  
2       LINE 137 WANTS TO SEE IF THERE IS A PLACE THAT IS A  
3       STREET ALONG WITH ADDRESS. LET'S MOVE ON TO THE NEXT  
4       PAGE.

5               LINE 161 ANALYZES TO SEE IF THERE IS A PHONE  
6       NUMBER IN THE DOCUMENT AS FIRST INFORMATION. LINE 188  
7       CHECKS TO SEE IF THERE A STREET AS FIRST INFORMATION,  
8       AGAIN, LOOKING AT THE COMPONENT PARTS OF THE PARAGRAPHS  
9       THAT WERE CAPTURED BY THE PRIOR ROUTINE, FSCANGETDATA.

10              MOVING ON TO THE NEXT PAGE. LINE 218, SEES IF  
11       THERE IS THE STREET ADDRESS IN THE DOCUMENT. LINE 232  
12       SEES IF THERE IS A PLACE IN THE DOCUMENT. MOVING ON TO  
13       THE NEXT PAGE. AND ALL OF THIS IS EXECUTED AFTER THE  
14       SINGLE ENTRY OF THE EXECUTE COMMAND, THIS IS ANALYSIS.

15              LINE 265 LOOKS TO SEE IF THE STREET ADDRESS IS  
16       EMPTY AND IF IT ISN'T, IT PICKS UP THE STREET ADDRESS  
17       JUST AS ALL OF THE OTHER "IF'S," TO CHECK IF THE  
18       DOCUMENT HAS THE FIRST INFORMATION.

19              AND THERE ARE MANY OTHERS, BUT IN THE INTEREST  
20       OF TIME, I'LL STOP HERE.

21       Q. THANK YOU, MR. KLAUSNER. ALL RIGHT, MR. KLAUSNER  
22       LET'S TURN TO THE VALIDITY ISSUE. WOULD YOU TELL US  
23       WHAT YOUR UNDERSTANDING OF -- IS OF ANTICIPATION?

24       A. MY UNDERSTANDING IS THAT IN ORDER FOR SOMETHING TO  
25       ANTICIPATE THE PATENT, IT HAS TO BE IN A SINGLE



1       REFERENCE ALL OF THE ASSERTED CLAIMS, ALL OF THE  
2       ASSERTED CLAIMS, THE PREAMBLE AND ALL OF THE STEPS.  
3       THAT'S MY UNDERSTANDING.  AND THEY HAVE TO BE THERE IN  
4       THE SAME SEQUENCE AND THEY ALSO HAVE TO PROVIDE THE  
5       SAME FUNCTION IN THE SAME WAY AS THE CLAIM.  AND IT  
6       CAN'T BE COMBINED WITH ANOTHER REFERENCE IN ORDER TO  
7       ANTICIPATE, THAT'S MY UNDERSTANDING.

8       Q.  MR. KLAUSNER, IN YOUR UNDERSTANDING CAN  
9       COMBINATIONS OF PRIOR ART ITEMS ANTICIPATE A PATENT  
10      CLAIM?

11     A.  NO.

12     Q.  WELL, LET'S LOOK AT THE PRIOR ART RELIED UPON BY  
13     MICROSOFT.  FIRST, IS MR. CROFT RELYING UPON ANY  
14     COMBINATION OF PRIOR ART ITEMS FOR HIS ANTICIPATION  
15     ANALYSIS?

16     A.  YES.  HE HAS.

17     Q.  WHICH ONES?

18     A.  HE RELIED ON THE MICROSOFT WORD IN COMBINATION WITH  
19     ADDRESSMATE.  AND HE RELIED ON CLARIS EMAIL, IT'S A  
20     SEPARATE PROGRAM, A SEPARATE PRODUCT, ALONG WITH APPLE  
21     DATA DETECTORS.

22     Q.  LET'S TURN TO THE ADDRESSMATE PLUS PRODUCT.  NOW,  
23     ARE YOU FAMILIAR WITH THE ADDRESSMATE PLUS AND  
24     MICROSOFT WORD PRODUCTS RELIED UPON BY MR. CROFT FOR  
25     HIS INVALIDITY ARGUMENTS, WITH RESPECT TO ADDRESSMATE?

1 A. YES, I AM.

2 Q. HOW ARE YOU FAMILIAR WITH THEM?

3 A. I'VE USED THEM, I'VE INSTALLED THEM AND USED THEM.

4 Q. AND ARE YOU FAMILIAR WITH HOW THE ADDRESSMATE PLUS

5 IN MICROSOFT WORD PRODUCTS WERE PROVIDED ON THE MARKET

6 PRIOR TO SEPTEMBER 1998?

7 A. YES. I THINK WE SAW HERE THE ADDRESSMATE WAS

8 PROVIDED IN A BOX, AND I THINK THE JURY SAW THE BOX.

9 SEPARATE PRODUCT. MICROSOFT WORD IS PROVIDED, IT CAN

10 BE BOUGHT BY ITSELF ACTUALLY, SEPARATELY, AND CAN ALSO

11 BE AS PART OF THE OFFICE SUITE, SUCH AS OFFICE --

12 MICROSOFT OFFICE 95 OR 97.

13 Q. ARE ADDRESSMATE PLUS AND MICROSOFT WORD PART OF THE

14 SAME PRODUCT?

15 A. NO.

16 Q. WOULD YOU EXPLAIN.

17 A. THEY'RE SEPARATE PRODUCTS ENTIRELY. YOU DON'T BUY

18 THEM TOGETHER. I MEAN, THEY DON'T COME IN THE SAME

19 PACKAGE, THEY DON'T COME AS A -- AS A COMBINATION. YOU

20 HAVE TO COMBINE THEM.

21 Q. WHOSE PRODUCT IS ADDRESSMATE PLUS?

22 A. ADDRESSMATE BELONGED TO, FIRST ADDRESSMATE, I

23 THINK, BELONGED TO COSTAR CORPORATION.

24 Q. AND WHOSE PRODUCT IS WORD?

25 A. THAT'S A PRODUCT OF MICROSOFT.

1 Q. NOW, HOW IS MR. CROFT COMBINING THOSE TWO PRODUCTS  
2 FOR HIS ANTICIPATION ARGUMENT?

3 A. ADDRESSMATE IS ONE OF A LARGE NUMBER OF PRODUCTS  
4 THAT ARE CALLED PLUG-INS OR ADD-INS. WHAT YOU DO IS  
5 YOU HAVE ONE PRODUCT, SUCH AS WORD, AND THEN YOU PLUG  
6 SOMETHING INTO IT. AND BECAUSE YOU HAVE PLUGGED  
7 SOMETHING INTO IT, THE TWO OF THEM PASS INFORMATION  
8 BACK AND FORTH OR WORK IN SOME WAY.

9 NOW, MY UNDERSTANDING IS, BASED ON MY  
10 UNDERSTANDING OF ANTICIPATION OR WHAT IS A VALID  
11 ANTICIPATION, THAT KIND OF PLUGGING IN IS NOT AN  
12 ANTICIPATING PRIOR ART. SO ANYTHING THAT PLUGS IN LIKE  
13 ADDRESSMATE IS NOT PRIOR ART FOR ANTICIPATION.

14 Q. LET'S TURN TO MR. CROFT'S INVALIDITY ARGUMENTS WITH  
15 RESPECT TO THE ADDRESSMATE PLUS PRODUCT. HAVE YOU READ  
16 MR. CROFT'S REPORT AND DEPOSITION TESTIMONY AND SEEN  
17 HIS LIVE TESTIMONY IN COURT YESTERDAY AND THIS MORNING  
18 ON THE COSTAR ADDRESSMATE PLUS PRODUCT?

19 A. I HAVE.

20 Q. AND WERE YOU HERE TUESDAY FOR THE TESTIMONY OF  
21 MR. BLOCK, AND DID YOU HEAR HIS TESTIMONY?

22 A. YES.

23 Q. NOW, FOR EACH OF THE ASSERTED CLAIMS, DOES THE  
24 COSTAR ADDRESSMATE PLUS PRODUCT AS RELIED UPON BY  
25 MR. CROFT AND MICROSOFT, DISCLOSE EACH AND EVERY

1 ELEMENT OF THE CLAIM PRECISELY AS SET FORTH IN THE  
2 CLAIM?

3 A. NO.

4 Q. WOULD YOU TELL US WHY NOT?

5 A. FIRST OF ALL, AND VERY SIMPLY, THERE'S NO ANALYSIS  
6 OF THE DOCUMENT. IT'S PRETTY CLEAR IF YOU LOOK AT THE  
7 PATENT, IT SAYS RIGHT IN THE PREAMBLE, YOU'RE WITHIN A  
8 DOCUMENT AND YOU'RE WITHIN AN APPLICATION PROGRAM. IT  
9 DOESN'T SAY YOU'RE WITHIN ADDRESSMATE. IT DOESN'T SAY  
10 YOU'RE WITHIN SOME PLUG-IN. IT SAYS THAT THE DOCUMENT  
11 ANALYZES. AND I POINT THE JURY SPECIFICALLY TO COLUMN  
12 4, LINE, I THINK IT'S 25 OF THE ARENDI PATENT. YES.  
13 IT SAYS ON COLUMN 4, LINE 25, THE PROGRAM DECIDES WHAT  
14 WAS FOUND IN THE DOCUMENT --

15 Q. MR. KLAUSNER, WOULD YOU CLEAR YOUR SCREEN, PLEASE.

16 A. SORRY. ALL RIGHT, THERE IT IS. I'M JUST GOING TO  
17 ENCIRCLE IT, THAT'S LINE 25. THE PROGRAM DECIDES WHAT  
18 WAS FOUND IN THE DOCUMENT. THE PROGRAM IN THIS CASE,  
19 AND THE PATENT GIVES US EXAMPLES IS MICROSOFT WORD, FOR  
20 EXAMPLE. IN THE COMBINATION THAT MR. BLOCK CREATED,  
21 THAT WAS THE PLUG-IN OF ADDRESSMATE INTO WORD, WORD IS  
22 NOT DECIDING WHAT IS IN THE DOCUMENT, IT IS ADDRESSMATE  
23 THAT'S DECIDING WHAT'S IN THE DOCUMENT.

24 Q. ANY OTHER REASONS THAT THE ADDRESSMATE PLUS AS  
25 RELIED UPON BY MR. CROFT, DOES NOT ANTICIPATE?

1     A.   YES.   THE -- ONE OF THE TWO THINGS -- DR. CROFT  
2     RELIES ON TWO THINGS, I'VE HEARD HIM TESTIFY.   THE  
3     FIRST IS HE RELIES ON THIS SAVE COMMAND, THAT' IS, WHEN  
4     YOU HIT THE SAVE BUTTON, THE ADDRESS THAT'S IN THE  
5     DOCUMENT IS SAVED TO THE DATABASE.   WELL, IN FACT, THE  
6     SAVE BUTTON DOESN'T ANALYZE AND THE SAVE BUTTON DOESN'T  
7     SEARCH.   DR. CROFT'S TESTIMONY THAT, IN FACT, IT DOES  
8     SO IS WRONG, IT'S JUST NOT THERE.   AND I BELIEVE HE  
9     ACTUALLY DIDN'T TESTIFY THAT IT SEARCHED ANYTHING.

10           I PERFORMED TESTS, THE TESTS SHOWED THAT WHEN I  
11     TRIED TO SAVE AN INCORRECT ADDRESS, THAT IS THE ZIP  
12     CODE WAS WRONG, IT DIDN'T SAVE THE CORRECTED ONE.   IT  
13     JUST PUT EXACTLY WHAT'S PUT IN INTO THE DATABASE.   SO  
14     THERE'S NO SEARCHING, THERE'S NO ANALYSIS FOR THE SAVE  
15     EXAMPLE.

16           THE OTHER EXAMPLE THAT DR. CROFT USES AS THE  
17     BASIS FOR HIS INVALIDITY ARGUMENT IS THIS ADDRESS  
18     CORRECTION FEATURE, THIS AUTO CORRECT.   THAT DOESN'T  
19     WORK, THAT'S CLEAR.   DR. BLOCK, WHEN HE TESTIFIED, SAID  
20     IT DIDN'T WORK.   WE SAW IT DIDN'T WORK.   THEREFORE, THE  
21     PATENT STANDS IN THE FACE OF THIS PIECE OF COMBINATION  
22     PRIOR ART.

23     Q.   NOW, DOES THE SAVE ADDRESS FUNCTION IN THE  
24     ADDRESSMATE PLUS HAVE ELEMENT F, THE DISPLAYING,  
25     ]INSERTING, AND COMPLETING ELEMENT?

1     A.  NO, AND, IN FACT, WHAT WE SAW WAS THAT YOU -- YOU  
2     ACTUALLY HAVE TO HAD HIT SOME MORE KEYS AS THE USER, IN  
3     ORDER TO SEE WHAT'S IN THE DATABASE THAT WAS SAVED AS A  
4     RESULT OF THE SAVE COMMAND.  SO IT DOESN'T SHOW UP FOR  
5     YOU.  IN OTHER WORDS, ELEMENT F, MEANING THAT THERE IS  
6     SECOND INFORMATION DISPLAYING IT, NO.  INSERTING IT,  
7     NO.  WHEN YOU SAVE IT, WHEN YOU SAVE THE ADDRESS, ALL  
8     THAT HAPPENS IS IT GOES OUT THERE BEHIND THE COVERS AND  
9     PUTS IT AWAY, THAT ELEMENT F IS MISSING.

10    Q.  HOW ABOUT IF WE WERE TO TAKE JUST THE ADDRESSMATE  
11    PLUS PRODUCT ALONE WITHOUT WORD, DOES THAT PRODUCT  
12    ALONE DISCLOSE EACH AND EVERY ELEMENT OF THE ASSERTED  
13    CLAIMS AS PRECISELY SET FORTH IN THE CLAIM.

14    A.  NO.

15    Q.  WOULD YOU PLEASE EXPLAIN?

16    A.  WELL, THERE IS NOT EVEN A WORD PROCESSOR.  
17    ADDRESSMATE PLUS JUST MANAGES A DATABASE.  IT'S LIKE A  
18    CONTACT MANAGER, LIKE MICROSOFT OUTLOOK OR MICROSOFT  
19    ACCESS OR SOME OF THE OTHER EXAMPLES THAT ARE IN COLUMN  
20    1 OF THE PATENT AND IN COLUMN 9 OF THE PATENT.  IF WE  
21    LOOK AT THOSE COLUMNS, WE'LL SEE THE EXAMPLES.  AND TO  
22    PUT IT SIMPLY, IT REALLY DOESN'T DO MUCH BY ITSELF  
23    OTHER THAN MANAGE ADDRESSES.  SO IT DOESN'T LOOK WITHIN  
24    THE DOCUMENT, IT'S NOT A WORD PROCESSOR, IT DOESN'T DO  
25    ANALYSIS.

1 Q. DOES IT DO ANY OF THE OTHER ELEMENTS THAT YOU  
2 TESTIFIED ABOUT WITH RESPECT TO THE COMBINATION OF THE  
3 ADDRESSMATE PLUS PRODUCT WITH THE WORD PRODUCT?

4 A. IT DOESN'T DO THOSE EITHER.

5 Q. NOW, WE HEARD TESTIMONY ABOUT THE ADDRESSMATE PLUS  
6 MANUAL. FOR EACH OF THE ASSERTED CLAIMS, DOES THE  
7 ADDRESSMATE PLUS MANUAL ALONE, THAT IS, WITHOUT BEING  
8 COMBINED WITH THE ADDRESSMATE PLUS PRODUCT OR THE  
9 MICROSOFT WORD PRODUCT, DOES THE MANUAL DISCLOSE EACH  
10 AND EVERY ELEMENT OF THE CLAIMS PRECISELY AS SET FORTH  
11 IN THE CLAIM?

12 A. NO.

13 Q. WOULD YOU PLEASE EXPLAIN?

14 A. THE MANUAL DOESN'T DESCRIBE ANY ANALYSIS THAT'S  
15 DONE INSIDE A WORD PROCESSOR. THE MANUAL DOESN'T  
16 DESCRIBE SEARCHING, USING THAT FIRST INFORMATION  
17 BECAUSE THERE IS NO FIRST INFORMATION. NOTHING'S BEEN  
18 ANALYZED IN THE DOCUMENT. THE PATENT REQUIRES THAT THE  
19 DOCUMENT BE ANALYZED TO DETERMINE THE FIRST  
20 INFORMATION, AS AN EXAMPLE.

21 Q. LET'S TURN TO, THEN, THE NEXT COMBINATION, THE  
22 CLARIS EMAILER COMBINED WITH THE APPLE DATA DETECTORS.  
23 ARE YOU FAMILIAR WITH THE CLARIS EMAILER AND THE APPLE  
24 DATA DETECTORS PRODUCTS RELIED UPON BY MR. CROFT IN HIS  
25 INVALIDITY ARGUMENTS WITH RESPECT TO THE APPLE DATA

1       DETECTORS?

2       A.   YES.

3       Q.   AND HOW ARE YOU FAMILIAR WITH THAT?

4       A.   I'VE READ ABOUT THEM, I'VE ATTEMPTED TO INSTALL IT.

5       AND I SAW THEM AND EXECUTED THEM LAST NIGHT.

6       Q.   OKAY.  AND ARE YOU FAMILIAR WITH HOW THE CLARIS

7       EMAILER AND THE APPLE DATA DETECTORS PRODUCTS WERE

8       PROVIDED ON THE MARKET PRIOR TO SEPTEMBER OF 1998?

9       A.   YES.  CLARIS EMAILER IS A PRODUCT, IT'S A SEPARATE

10      PRODUCT.  AND THE APPLE DATA DETECTORS IS ALSO A

11      SEPARATE PRODUCT.  IN FACT, APPLE DATA DETECTORS IS A

12      PLUG-IN, JUST AS I WAS DESCRIBING BEFORE THAT THE

13      ADDRESSMATE IS A PLUG-IN.

14      Q.   AND HOW IS MR. CROFT COMBINING THOSE TWO PRODUCTS

15      FOR HIS ANTICIPATION ANALYSIS?

16      A.   DR. CROFT IS COMBINING THEM BY PLUGGING IN THE

17      APPLE DATA DETECTORS IN TO CLARIS EMAIL, AND MAKING,

18      THEREBY, A COMBINATION.

19      Q.   LET'S TURN TO HIS INVALIDITY ARGUMENTS WITH RESPECT

20      TO THE CLARIS EMAILER PRODUCT.  HAVE YOU READ

21      DR. CROFT'S REPORT AND DEPOSITION TESTIMONY AND SEEN

22      HIS LIVE TESTIMONY IN COURT YESTERDAY AND THIS MORNING

23      ON THE CLARIS EMAILER AND APPLE DATA DETECTORS

24      PRODUCTS?

25      A.   YES.



1 Q. AND WERE YOU HERE YESTERDAY AND TUESDAY FOR THE  
2 TESTIMONY OF MR. MILLER, AND DID YOU HEAR HIS  
3 TESTIMONY?

4 A. YES. I ALSO WATCHED HIS DEMONSTRATION.

5 Q. NOW FOR EACH OF THE ASSERTED CLAIMS, DOES THE  
6 CLARIS EMAILER PRODUCT AS RELIED UPON BY DR. CROFT AND  
7 MICROSOFT, DISCLOSE IN A SINGLE PRIOR ART REFERENCE  
8 EACH AND EVERY ELEMENT OF THE CLAIM AS PRECISELY SET  
9 FORTH IN THE CLAIM?

10 A. NO.

11 Q. WOULD YOU TELL US WHY NOT?

12 A. WELL, VERY SIMPLY, AT LEAST ONE REASON, IS THAT  
13 THERE IS NO ANALYSIS. DR. MILLER, WHO INVENTED THIS,  
14 SAID IT DOESN'T ANALYZE AFTER YOU CLICK THE BUTTON. IN  
15 ADDITION, IT DOESN'T DISPLAY, INSERT OR CORRECT OR  
16 COMPLETE ANY INFORMATION AND THAT'S ELEMENT F OF CLAIM  
17 1 OF THE ARENDI PATENT.

18 Q. AND DID YOU HEAR THE TESTIMONY OF MR. MILLER, THAT  
19 IN THE CLARIS EMAILER WITH THE APPLE DATA DETECTORS  
20 THERE IS NO ANALYSIS AFTER THE SINGLE ENTRY OF THE  
21 EXECUTE COMMAND?

22 A. YES. I THINK THAT'S DR. MILLER.

23 Q. OKAY, THANK YOU. NOW, FOR EACH OF THE ASSERTED  
24 CLAIMS OF THE ARENDI PATENT, DOES THE APPLE DATA  
25 DETECTORS PRODUCT ALONE, THAT IS, WITHOUT THE CLARIS

1 EMAILER, DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIM  
2 AS PRECISELY SET FORTH IN THE CLAIM?

3 A. NO.

4 Q. WOULD YOU PLEASE EXPLAIN.

5 A. THE APPLE DATA DETECTORS IS ENTIRELY DEPENDENT ON  
6 SOMETHING ELSE IN ORDER TO EVEN BE IN A DOCUMENT. IF  
7 YOU HAVE APPLE DATA DETECTORS ALONE, YOU DON'T HAVE A  
8 DOCUMENT.

9 Q. NOW, MR. KLAUSNER, ARE YOU FAMILIAR WITH THE --  
10 ACTUALLY, LET'S TURN TO THE SPELL AND WORD CHECKER  
11 PRIOR ART IDENTIFIED BY MICROSOFT AND DR. CROFT. ARE  
12 YOU FAMILIAR WITH THE COREL WORDPERFECT SPELLCHECKER,  
13 THE COREL WORDPERFECT QUICKCORRECT, AND THE LANG, WHAT  
14 MICROSOFT HAS CALLED THE IBM PATENT, RELIED UPON BY  
15 DR. CROFT FOR HIS INVALIDITY ANALYSIS?

16 A. YES.

17 Q. AND HOW ARE YOU FAMILIAR WITH THEM?

18 A. WELL, THE COREL WORDPERFECT, BOTH THE SPELLCHECKER  
19 AND THE QUICKCORRECT ARE PRODUCTS -- THEY ARE THE SAME  
20 PRODUCT, REALLY, AND I HAVE BEEN USING THAT PRODUCT.  
21 I'VE USED COREL SINCE I THINK IT WAS VERSION 4,  
22 WORDPERFECT. AND THE LANG PATENT, THE IBM PATENT I'VE  
23 ALSO STUDIED.

24 Q. CAN YOU TELL US WHAT EACH OF THOSE IS ABOUT, JUST  
25 GENERALLY SPEAKING?

1     A.  SPELLCHECKER IS ABOUT TRYING TO FIND OUT IF A  
2     COMBINATION OF CHARACTERS ACTUALLY IS A CORRECT  
3     COMBINATION OF CHARACTERS AS FAR AS EXTERNAL  
4     INFORMATION IS CONCERNED, LIKE A DICTIONARY, LIKE SOME  
5     LIST OF WORDS.  THAT'S ALL IT DOES.  IT DOESN'T  
6     DETERMINE WHAT THE MEANING OF THE WORD IS, IT DOESN'T  
7     EVEN DETERMINE IF IN CONJUNCTION WITH OTHER THINGS, IT  
8     MEANS ANYTHING IN PARTICULAR.  ALL IT'S LOOKING FOR IS  
9     TO FIND OUT IF THAT JUMBLE OF CHARACTERS FORMS  
10    SOMETHING THAT IS UNDERSTANDABLE IN THE LANGUAGE,  
11    ENGLISH IN THIS CASE.

12   Q.  HOW ABOUT THE LANG OR IBM PATENT?

13   A.  THE IBM PATENT DOES SOMETHING VERY SIMILAR, IT  
14   TRIES TO FIND OUT IF THE PERSON HAS MADE A SPELLING  
15   MISTAKE BECAUSE THEY HAVE SPELLED THE WORD THE WAY IT  
16   SOUNDS AND NOT NECESSARILY THE WAY THEY INTENDED, LIKE  
17   AFFECT OR EFFECT.

18   Q.  NOW, ARE ANY OF THOSE PIECES OF PRIOR ART ARENDI'S  
19   INVENTION OF THE '853 PATENT?

20   A.  NO.

21   Q.  WOULD YOU PLEASE EXPLAIN?

22   A.  THE ARENDI PATENT IS NOT ABOUT WHETHER A JUMBLE OF  
23   CHARACTERS IS ACTUALLY AN ENGLISH WORD.  WE'VE HEARD SO  
24   MUCH ABOUT THE ARENDI PATENT, A LOT OF IT FROM ME, IT'S  
25   ABOUT THE IDENTIFICATION OF INFORMATION.  IF I HAVE A

1       PARTICULAR WORD IN THE DOCUMENT, DOES IT MEAN ANYTHING,  
2       IS IT A FIRST NAME, IS IT A LAST NAME, IS IT A STREET  
3       ADDRESS, IS IT A DATE, A ZIP CODE.  THAT'S WHAT IT'S  
4       ABOUT.

5       Q.  HAVE YOU READ DR. CROFT'S REPORT AND DEPOSITION  
6       TESTIMONY AND SEEN HIS LIVE TESTIMONY IN COURT  
7       YESTERDAY ON THOSE ITEMS, THAT IS, THE COREL  
8       WORDPERFECT7 SPELLCHECKER, THE COREL WORDPERFECT7  
9       QUICKCORRECT AND THE LANG OR IBM PATENT?

10      A.  YES, BOTH YESTERDAY AND TODAY.

11      Q.  AND FOR EACH OF THE ASSERTED CLAIMS, DO ANY OF  
12      THOSE PRIOR ART ITEMS INDIVIDUALLY DISCLOSE IN A SINGLE  
13      REFERENCE EACH AND EVERY ELEMENT OF THE CLAIM PRECISELY  
14      AS SET FORTH IN THE CLAIM?

15      A.  NO, THEY DON'T.

16      Q.  WOULD YOU EXPLAIN WHY NOT?

17      A.  WELL, FIRST OF ALL, SPELLCHECKERS AS DR. CROFT HAS  
18      ALSO ADMITTED, HAVE BEEN KNOWN AT THE TIME OF THE  
19      FILING OF THE PATENT, AND, IN FACT, THE PATENT TALKS  
20      ABOUT THE WORDPERFECT PROGRAM BOTH IN COLUMN 1 AND IN  
21      COLUMN 9.  THEY WERE SUBMITTED WITH THE APPLICATION TO  
22      MS. DELLATORE, WHO WAS THE EXAMINER OF THIS PARTICULAR  
23      ARENDI PATENT.  THEY WERE BEFORE THE EXAMINER.  AND THE  
24      EXAMINER SAID THE ARENDI PATENT IS VALID EVEN THOUGH --

25      Q.  MR. KLAUSNER, WOULD YOU EXPLAIN FOR US WHY THE

1 INDIVIDUAL PRIOR ART REFERENCES DO NOT DISCLOSE EACH  
2 AND EVERY ELEMENT OF THE CLAIM PRECISELY AS SET FORTH  
3 IN THE CLAIM, WITHOUT GOING INTO THE PROSECUTION  
4 HISTORY?

5 A. THERE IS NO RECORD RETRIEVAL PROGRAM. DR. CROFT  
6 HAS TESTIFIED THAT THE RECORD RETRIEVAL PROGRAM CAN BE  
7 PART OF ANOTHER PROGRAM. THAT'S NOT TRUE. I THINK  
8 DR. CROFT MISUNDERSTANDS THE CLAIM LANGUAGE. IT IS  
9 VERY CLEAR FROM THE PREAMBLE AND CLAIM ELEMENT NUMBER  
10 1-A THAT A RECORD RETRIEVAL PROGRAM IS A SEPARATE  
11 PROGRAM FROM THE WORD PROCESSOR. IF YOU TAKE A LOOK AT  
12 THAT LANGUAGE, YOU'LL SEE THAT THE LANGUAGE SAYS --

13 IF WE CAN BRING UP THE PREAMBLE?

14 MR. FEHER: SURE. PUBLISH THIS TO THE JURY,  
15 YOUR HONOR.

16 Q. YOU WERE REFERRING TO THE PREAMBLE, MR. KLAUSNER?

17 A. YES. IN THE PREAMBLE I'M ENCIRCLING THAT THE -- IT  
18 SAYS THAT THE DOCUMENT IS CREATED USING AN APPLICATION  
19 PROGRAM. THE FIRST ELEMENT SAYS, PROVIDING A RECORD  
20 RETRIEVAL PROGRAM. THEY'RE TWO DIFFERENT THINGS. IN  
21 FACT, IF THE RECORD RETRIEVAL PROGRAM WERE A PART OF  
22 THE APPLICATION PROGRAM, YOU WOULDN'T HAVE TO HAVE THIS  
23 ELEMENT A.

24 CLEARLY, THEY ARE TWO SEPARATE THINGS. AND, IN  
25 FACT, ONE OF THE IDEAS OF THE ARENDI PATENT IS TO ALLOW

1 TO YOU WORK INSIDE THE WORD PROCESSOR WITHOUT HAVING TO  
2 GO OUTSIDE TO KNOW THE RECORD RETRIEVAL PROGRAM. IT'S  
3 AUTOMATICALLY OPENED FOR YOU, IT AUTOMATICALLY GOES OUT  
4 THERE AND ACCESSES THE DATA IN THE DATABASE. SO THEY  
5 ARE TWO SEPARATE THINGS.

6 Q. OKAY, MR. KLAUSNER, LET'S GO THROUGH EACH OF THOSE  
7 PRIOR ART REFERENCES INDIVIDUALLY, THAT IS, THE COREL  
8 WORDPERFECT7 SPELLCHECKER, THE COREL WORDPERFECT  
9 QUICKCORRECT AND THE LANG PATENT.

10 LET'S TAKE THE WORDPERFECT7 SPELLCHECKER FIRST.  
11 DOES THAT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIM  
12 PRECISELY AS SET FORTH IN THE CLAIM?

13 A. NO.

14 Q. WITH RESPECT TO THE ASSERTED CLAIMS?

15 A. IT DOESN'T.

16 Q. AND WOULD YOU TELL US WHY?

17 A. THERE'S NO RECORD RETRIEVAL PROGRAM. A  
18 SPELLCHECKER IS BUILT INTO -- THE COREL WORDPERFECT  
19 SPELLCHECK IS BUILT INTO THE WORDPERFECT QUICKCORRECT  
20 AND IS BUILT -- WELL, WE'LL STOP THERE. IT'S BUILT  
21 INTO THE SPELLCHECKERS. IN OTHER WORDS, IT'S NOT A  
22 SEPARATE PROGRAM.

23 Q. DOES THE COREL WORDPERFECT7 QUICKCORRECT DISCLOSE  
24 EACH AND EVERY ELEMENT OF EACH CLAIM PRECISELY AS SET  
25 FORTH IN THE CLAIM?

1 A. NO, IT DOESN'T.

2 Q. WOULD YOU TELL US WHY?

3 A. WELL, AS I WAS SAYING WITH THE FIRST ONE, THE  
4 WORDPERFECT SPELLCHECK, THERE IS NO RECORD RETRIEVAL  
5 PROGRAM. THERE ALSO IS NO ANALYSIS TO SEE IF THE FIRST  
6 INFORMATION IS CONTAINED IN THE DOCUMENT. FOR ALL OF  
7 THE SPELLCHECKERS, THIS ONE AND THE PRIOR ONE AND THE  
8 NEXT ONE, THESE ARE JUST A JUMBLE OF WORDS THAT ARE  
9 BEING LOOKED AT TO SEE IF THEY ARE IN A DICTIONARY.  
10 THIS IS NOT LOOKING AT THE MEANING OF THE WORD AS I  
11 DESCRIBED BEFORE.

12 Q. AND HOW ABOUT THE LANG/IBM PATENT, DOES THAT -- FOR  
13 EACH OF THE ASSERTED CLAIMS, DOES THAT PATENT DISCLOSE,  
14 WITHIN ITS FOUR CORNERS, EACH AND EVERY ELEMENT OF THE  
15 CLAIM PRECISELY AS SET FORTH IN THE CLAIM?

16 A. NO.

17 Q. WOULD YOU PLEASE EXPLAIN WHY NOT?

18 A. ALSO THERE IS NO RECORD RETRIEVAL PROGRAM, THAT'S A  
19 SEPARATE PROGRAM. IN FACT, THERE ISN'T EVEN A  
20 DATABASE. DR. CROFT HAS TESTIFIED THAT A DATABASE IS A  
21 FILE OUT THERE THAT YOU GO AND SEARCH; IN THIS CASE  
22 THERE IS NO DATABASE. THE RECORDS ARE RIGHT THERE IN  
23 THE PROGRAM MEMORY ALONG WITH THE PROGRAM. THERE IS  
24 ALSO NO ANALYSIS, JUST A LIST OF WORDS THAT ARE  
25 COMPARED TO EACH OTHER.

1 Q. NOW, DR. CROFT TESTIFIED THAT THE DEPENDENT CLAIMS,  
2 2, 7, 13, 14, AND 68 WERE ANTICIPATED BY AT LEAST ONE  
3 OF THE ITEMS OF PRIOR ART THAT YOU WENT OVER. DO YOU  
4 AGREE WITH MR. CROFT ON THAT ISSUE?

5 A. NO.

6 Q. WHY NOT? WOULD YOU PLEASE EXPLAIN FOR US?

7 A. WELL, TWO OF THE THINGS CITED BY DR. CROFT INVOLVE  
8 A COMBINATION OF THINGS. YOU CAN'T ANTICIPATE, AS FAR  
9 AS I KNOW, A CLAIM BY COMBINING TWO DISTINCT SEPARATE  
10 REFERENCES. AND THE OTHER THREE ARE SPELLCHECKERS,  
11 THEY DO NO ANALYSIS, THEY DON'T HAVE SEPARATE RECORD  
12 RETRIEVAL PROGRAMS, THEY DON'T ANTICIPATE THE CLAIMS OF  
13 THE PATENT, CLAIMS 1, 2, 7, 13, 14, 16 OR 68.

14 MR. FEHER: NO FURTHER QUESTIONS, YOUR HONOR.

15 CROSS-EXAMINATION

16 BY MR. SCHERKENBACH:

17 Q. GOOD AFTERNOON, DR. KLAUSNER.

18 A. IT'S MR. KLAUSNER. GOOD AFTERNOON.

19 Q. I'M SORRY, A LOT OF DOCTORS AROUND, TOO, I GUESS.

20 A. IT'S AN UNDERSTANDABLE MISTAKE.

21 Q. I WANT TO START WITH THE SOURCE CODE THAT YOU  
22 SHOWED THE JURY. YOU DIDN'T FIND ANYWHERE IN EITHER  
23 HRGETTAGGEDDATA OR IN FSCANGETDATA ANY USE OF THE WORD,  
24 "ANALYZE" OR "ANALYSIS ," DID YOU?

25 A. I DIDN'T.



1 Q. AND YOU'LL AGREE WITH ME THAT THE PIECES OF  
2 INFORMATION THAT THOSE ROUTINES SCAN FOR OR LOOK FOR  
3 ARE PIECES OF INFORMATION THAT HAVE ALREADY BEEN  
4 RECOGNIZED BY SMART TAGS, ISN'T THAT TRUE?

5 A. YES.

6 Q. SO THE ROUTINES THAT YOU POINTED OUT ARE NOT  
7 ANALYZING THE DOCUMENT TO FIND OUT WHAT THE USER TYPED,  
8 ARE THEY?

9 A. YOU'RE WRONG.

10 Q. THE PROGRAM ALREADY KNOWS WHAT THOSE PIECES OF  
11 INFORMATION ARE AT THE TIME OF RECOGNITION, ISN'T THAT  
12 TRUE?

13 A. NOT TRUE.

14 Q. CAN I HAVE THE ELMO, PLEASE. PARDON SOME OF MY  
15 SCRIBBLES HERE, BUT WE HAVE TO DO THIS IN REAL TIME.

16 YOU POINTED TO -- THIS IS A PIECE OF EXHIBIT 252  
17 WHICH INCLUDES FSCANGETDATA, RIGHT, ON THE SCREEN?

18 A. I THINK --

19 Q. I CAN SHOW YOU A COVER IF THAT HELPS YOU. HERE IS  
20 THE COVER. YOU TESTIFIED ABOUT THIS EXHIBIT, RIGHT,  
21 EXHIBIT 252?

22 A. YES, CORRECT.

23 Q. YOU SAID THIS IS FSCANGETDATA, RIGHT -- OR  
24 FSCANGETDATA IS INCLUDED IN EXHIBIT 252 TO BE ACCURATE;  
25 CORRECT?

1     A.   CORRECT.

2     Q.   AND YOU POINTED TO THE JURY SPECIFICALLY, AMONG

3     OTHER PLACES, TO THESE LINES OF CODE, 329, 330 AND SO

4     FORTH, RIGHT?

5     A.   CORRECT.

6     Q.   AND YOU POINTED OUT THAT ONE OF THE THINGS THAT YOU

7     THOUGHT WAS ANALYSIS WAS SCANNING WORD FOR SOME OF

8     THESE ITEMS, CORRECT?

9     A.   YES.

10    Q.   FIRST OF ALL, IT SAYS SCANS, IT DOESN'T SAY

11    ANALYZE, RIGHT?

12    A.   YES.

13    Q.   AND THE FIRST THING IT DOES IS IT LOOKS AT THE

14    CURRENT SMART TAGS COLLECTION, CORRECT?

15    A.   YES.

16    Q.   SO THE SMART TAGS HAVE ALREADY BEEN RECOGNIZED BY

17    THIS POINT IN THE CODE, RIGHT?

18    A.   WHERE ARE THEY?

19    Q.   CAN YOU ANSWER MY QUESTION?

20    A.   YES.

21    Q.   THEY HAVE BEEN RECOGNIZED ALREADY AS SMART TAGS

22    BEFORE THIS ROUTINE GETS INVOKED, RIGHT?

23    A.   ABSOLUTELY, THEY HAVE BEEN RECOGNIZED, JUST LIKE

24    FOR EXAMPLE, YOU MIGHT HAVE TAKEN A PHOTO OF AUNT MARY

25    FIVE YEARS AGO AND YOU PUT IT SOMEWHERE.   HOW DO YOU

1 FIND IT? YOU DON'T KNOW WHAT CLOSET IT'S IN, YOU DON'T  
2 KNOW WHAT BINDER IT'S IN, YOU DON'T EVEN KNOW WHAT BOX  
3 IT'S IN. YOU HAVE TO GO PARSE EVERYTHING YOU HAVE,  
4 SCAN EVERYTHING YOU HAVE TO FIND IT. AND WHEN YOU FIND  
5 THAT PHOTO ALBUM, JUST BECAUSE YOU MAY HAVE TAKEN IT  
6 WITH A KODAK CAMERA AND IT HAS A LITTLE DATE ON IT,  
7 DOESN'T MEAN YOU HAVE LOCATED IT OR EVEN DETERMINED  
8 THAT IT WAS ON A PARTICULAR DAY, YOU HAVE TO LOOK AT  
9 THE PHOTO AND SAY THAT'S THE ONE I WANT OF AUNT MARY,  
10 NOT THAT ONE, NOT THAT ONE. THERE'S SOME RECOGNITION  
11 -- I'M SORRY, THERE'S SOME ANALYSIS; YOU LOOK AT IT,  
12 YOU ANALYZE IT.

13 I THINK IT'S SIMPLISTIC. I THINK THE JURY NEEDS  
14 TO UNDERSTAND THAT IT'S SIMPLISTIC TO SAY THAT YOU JUST  
15 GO GET IT. YOU DON'T GO GET IT. IT'S HIDDEN IN THE  
16 DOCUMENT. THERE IS A PROCEDURE THAT HAS TO BE USED --  
17 I'M SORRY. THERE IS PROCEDURE, THERE IS AN ALGORITHM  
18 THAT THE PROGRAM HAS TO FOLLOW TO ANALYZE EXACTLY WHERE  
19 THAT TAG IS, AS WELL AS TO ANALYZE THE PARAGRAPHS  
20 BEFORE AND AFTER THE PARTICULAR TAG.

21 Q. ARE YOU DONE?

22 A. OKAY.

23 Q. CAN YOU LOOK BACK AT THE NEXT LINE UNDER THE SCAN  
24 HEADING, WHERE IT SAYS THE NEXT THING IT DOES IS IT  
25 SCANS ALL PARAGRAPHS; DO YOU SEE THAT?

1     A.   YES.

2     Q.   THE SMART TAGS IN THOSE NEARBY PARAGRAPHS ALSO ARE

3     RECOGNIZED AT THE TIME THE USER TYPES; RIGHT?

4     A.   CORRECT.

5     Q.   NOW, I DON'T THINK YOU POINTED OUT FOR THE JURY ANY

6     OF THESE REFERENCES TO ARRAYS IN THE CODE, DID YOU, DID

7     YOU REFER TO THE WORD "ARRAY" IN YOUR TESTIMONY?

8     A.   YES.

9     Q.   YOU DID.  AND AN ARRAY IS WHAT'S CALL A DATA

10    STRUCTURE TO A COMPUTER SCIENTIST, RIGHT?

11    A.   YES.

12    Q.   AND ARRAYS STORE THINGS, RIGHT?

13    A.   ARRAYS CONTAIN THINGS THAT THEY ARE GIVEN.  THEY

14    DON'T STORE THINGS OUT OF THIN AIR, YOU HAVE TO ASSIGN

15    THINGS TO THEM.

16    Q.   AND, IN FACT, THE ARRAYS REFERRED TO, FOR EXAMPLE,

17    IN THE HRGETTAGGEDDATA ROUTINE, WHICH I'VE PUT UP ON

18    THE ELMO, THOSE ARRAYS ALREADY STORE THE SMART TAG

19    INFORMATION THAT HAS BEEN LEARNED AT THE TIME OF

20    RECOGNITION, RIGHT?

21    A.   I DISAGREE.

22    Q.   WELL, SOME OF THEM DO, DON'T THEY?

23    A.   NO, NOT THE ONES YOU HAVE HIGHLIGHTED.

24    Q.   YOU DISPUTE THAT THE -- PUT TO ONE SIDE THE

25    SPECIFIC ONES I'VE HIGHLIGHTED.

1           YOU DISPUTE THAT THE SMART TAG INFORMATION THAT  
2       IS RECOGNIZED AS THE USER TYPES, IS STORED IN AN ARRAY  
3       OR SOME DATA STRUCTURE, YOU DISPUTE THAT?

4       A.   I DON'T DISPUTE THAT.

5       Q.   NOW, YOU ALSO DON'T DISPUTE THAT LOCATING IS NOT  
6       ANALYSIS, RIGHT?

7       A.   I DON'T DISPUTE THAT SIMPLE LOCATING IS NOT  
8       ANALYSIS.   COPYING AND FETCHING, THAT IS, COPYING AND  
9       PASTING IS NOT ANALYSIS; CORRECT.

10      Q.   AND FINDING A RECOGNIZED SMART TAG IN THE DOCUMENT  
11      IS NOT ANALYSIS, RIGHT?

12      A.   IF IT'S A SIMPLE POINTER, IT IS NOT ANALYSIS.

13      Q.   FETCHING OR RETRIEVING A RECOGNIZED SMART TAG,  
14      THAT'S NOT ANALYSIS?

15      A.   NOT IF IT'S A SIMPLE POINTER, GO GET IT, NO.

16      Q.   SO WHAT THIS ALL BOILS DOWN TO IS IF IT'S NOT  
17      PARTICULARLY EASY TO FIND SOMETHING THAT YOU HAVE  
18      ALREADY RECOGNIZED, THAT'S ANALYSIS IN YOUR OPINION?

19      A.   NO.

20      Q.   INCIDENTALLY --

21      A.   NOT ONLY THAT.

22      Q.   -- YOU RELIED ON THE PROSECUTION HISTORY IN  
23      ARRIVING AT YOUR OPINIONS, DID YOU NOT?

24      A.   NO.

25      Q.   YOU DID REVIEW THE PROSECUTION HISTORY, DIDN'T YOU?

1 A. SURE.

2 Q. YOU DIDN'T RELY ON IT FOR ANY PURPOSE?

3 A. WELL, PERHAPS YOU'LL REFRESH MY MEMORY.

4 Q. WELL, CAN YOU RECALL WITHOUT ME REFRESHING YOUR

5 MEMORY WHETHER IN FORMING THE OPINIONS IN YOUR EXPERT

6 REPORT THAT YOU CONSIDERED THE PROSECUTION HISTORY?

7 A. WELL, LET ME THINK. (PAUSE) I DON'T REMEMBER.

8 Q. YOU SAID HERE TODAY THAT YOU WERE PRETTY SURE THE

9 EXAMINER CONSIDERED WORDPERFECT SPELLCHECK BECAUSE SHE

10 SAID SO IN THE PROSECUTION HISTORY?

11 A. NO.

12 Q. YOU DIDN'T SAY THAT?

13 A. IT WAS IN THE APPLICATION, IT'S ON THE PATENT.

14 Q. RIGHT. AND YOU REFERRED, IN SUBSTANCE, TO

15 SOMETHING THE EXAMINER SAID OR DID DURING PROSECUTION,

16 DID YOU NOT, ON YOUR TESTIMONY JUST NOW?

17 A. ABSOLUTELY NOT. I POINTED TO THE PATENT, I POINTED

18 TO COLUMN 1 IN THE PATENT AND TO COLUMN 9 OF THE

19 PATENT, AND THE FACT THAT THESE WERE PART OF THE

20 APPLICATION. IF YOU TAKE A LOOK AT COLUMN 1 OF THE

21 PATENT, PARTICULARLY IN LINE 30, YOU SEE WORDPERFECT,

22 YOU TAKE A LOOK AT THE PATENT IN LINE 9 -- I'M SORRY,

23 COLUMN 9, LINE 55, WORDPERFECT.

24 Q. DID I MISHEAR YOU WHEN I THOUGHT YOU SAID THAT THE

25 EXAMINER OF THE ARENDI PATENT WAS AWARE OF

1 SPELLCHECKERS LIKE WORDPERFECT AND, IN FACT, SAID IT  
2 DIDN'T APPLY TO THE PATENT OR WORDS TO THAT EFFECT, THE  
3 PATENT APPLICATION WAS ALLOWED OVER THOSE  
4 SPELLCHECKERS; YOU DIDN'T SAY THAT?

5 A. I THINK YOU MISHEARD ME.

6 Q. WELL, WE'LL HAVE TO CHECK THE RECORD ON THAT. YOU  
7 -- TO TALK ABOUT USER SELECTION FOR A MOMENT,  
8 MR. KLAUSNER, YOUR OPINION IS THAT MR. HEDLOY DID NOT  
9 GIVE UP USER SELECTION OF TEXT PRIOR TO THE SINGLE  
10 ENTRY OF THE EXECUTE COMMAND, IN OTHER WORDS, HE DIDN'T  
11 GIVE THAT UP DURING THE PROSECUTION OF THE PATENT,  
12 RIGHT?

13 MR. FEHER: OBJECTION, YOUR HONOR. THAT GOES TO  
14 A LEGAL ISSUE AND ALSO PROSECUTION HISTORY ESTOPPEL IS  
15 NOT IN THE CASE.

16 THE COURT: READ THAT QUESTION BACK, PLEASE.

17 (QUESTION READ BACK)

18 THE COURT: SUSTAIN THE OBJECTION TO THAT  
19 QUESTION, MR. SCHERKENBACH.

20 Q. ALL RIGHT. YOUR UNDERSTANDING OF THE -- OF CLAIM 1  
21 OF THE PATENT IS THAT IT DOES NOT PRECLUDE USER  
22 SELECTION OF TEXT, RIGHT?

23 A. RIGHT.

24 Q. AND YOU BELIEVE, IN PARTICULAR, THAT ARENDI DID NOT  
25 GIVE UP CLAIM COVERAGE OF USER SELECTION OF TEXT IN

1 VIEW OF WHAT IT TOLD THE EXAMINER DURING PROSECUTION OF  
2 THE PATENT, RIGHT?

3 MR. FEHER: OBJECTION, THAT'S CLAIM  
4 CONSTRUCTION, YOUR HONOR.

5 THE COURT: OVERRULED. YOU MAY ANSWER.

6 THE WITNESS: CAN I HEAR THE QUESTION AGAIN,  
7 YOUR HONOR?

8 THE COURT: READ THE QUESTION BACK, PLEASE.

9 (QUESTION READ BACK)

10 A. YES, THAT'S CORRECT.

11 Q. AND IT'S ALSO YOUR VIEW THAT THE ARENDI PATENT DOES  
12 NOT REQUIRE THE USER TO SELECT THE TEXT IN THE DOCUMENT  
13 BY PLACING THE MOUSE POINTER OVER THE TEXT, RIGHT?

14 MR. FEHER: SAME OBJECTION, YOUR HONOR.

15 THE COURT: ARE YOU REFERRING TO HIS TESTIMONY  
16 OR WHAT YOU THINK HIS VIEW IS?

17 MR. SCHERKENBACH: I THOUGHT I ASKED WHAT HIS  
18 VIEW IS, BUT THAT'S THE QUESTION. I CAN REPHRASE, YOUR  
19 HONOR, IF THAT WOULD HELP.

20 THE COURT: SUSTAIN THE OBJECTION.

21 Q. IS IT ALSO YOUR UNDERSTANDING, MR. KLAUSNER, OF  
22 CLAIM 1 THAT IT DOES NOT REQUIRE THE USER TO SELECT THE  
23 TEXT, PARTICULARLY BY PLACING THE MOUSE POINTER OVER  
24 THE TEXT?

25 A. IT DOESN'T REQUIRE THAT.



1           THAT CAN BE PERFORMED BY CLAIM 13, FOR EXAMPLE.

2           Q. ARE YOU FAMILIAR WITH THE PANDIT PATENT,  
3           P-A-N-D-I-T?

4           MR. FEHER: OBJECTION, YOUR HONOR.

5           THE COURT: OVERRULED.

6           A. YES.

7           Q. AND YOU'RE FAMILIAR WITH THAT FROM READING THE  
8           PROSECUTION HISTORY OF ARENDI'S PATENT, RIGHT?

9           A. YES.

10          Q. AND YOU CONSIDERED THE PANDIT PATENT IN ARRIVING AT  
11          YOUR OPINIONS IN THIS CASE, RIGHT?

12          A. YES.

13          Q. AND SO YOU'RE FAMILIAR WITH THE ARGUMENTS ARENDI  
14          MADE AND THE CHANGES ARENDI MADE TO ITS CLAIM TO  
15          DISTINGUISH THE PANDIT PATENT?

16          MR. FEHER: OBJECTION, YOUR HONOR, CLAIM  
17          CONSTRUCTION.

18          THE COURT: APPROACH THE SIDE BAR, GENTLEMEN.

19          (BENCH CONFERENCE HELD ON THE RECORD)

20          THE COURT: WHERE ARE YOU GOING WITH THIS?

21          MR. SCHERKENBACH: I THOUGHT THE DOOR WAS OPENED  
22          ON PROSECUTION HISTORY BECAUSE HE HAS TESTIFIED NOT  
23          JUST HERE TODAY, BUT BEFORE, THAT HE HAD CONSIDERED IT  
24          AND THAT IT PLAYED A ROLE IN HIS OPINIONS. HE HAS  
25          OPINED ON THE MEANING OF THE CLAIMS, WHAT HE THINKS THE

1 MEANING OF THE CLAIMS IS, AND --

2 THE COURT: WELL, FIRST OF ALL, IT DOES SEEM  
3 THAT THE WITNESS'S TESTIMONY IS A LITTLE INCONSISTENT  
4 NOW WITH WHAT HE PREVIOUSLY SAID ABOUT WHETHER HE MADE  
5 A STATEMENT DURING HIS DIRECT EXAMINATION THAT THE  
6 EXAMINER KNEW OF THE WORDPERFECT SPELLCHECKER, BUT  
7 APPROVED THE PATENT NEVERTHELESS. SO THAT WAS MY  
8 RECOLLECTION OF HIS TESTIMONY. AND THE DOOR HAS BEEN  
9 PARTIALLY OPENED TO GET IN THE PROSECUTION HISTORY.  
10 AND ALSO BECAUSE THE DOOR HAS BEEN PARTIALLY OPENED, I  
11 WILL ALLOW YOU TO QUESTION HIM ON ANY THINGS THAT HE  
12 HAS SAID IN HIS DIRECT TESTIMONY THAT RELATE TO THE  
13 PROSECUTION HISTORY. BUT I WON'T ALLOW YOU TO BRING UP  
14 THINGS THAT HE HASN'T TESTIFIED ABOUT REGARDING THE  
15 PROSECUTION HISTORY.

16 MR. SCHERKENBACH: ALL RIGHT.

17 MR. HAYES: OKAY. I MEAN, JUST TO LET YOU KNOW,  
18 THE ONLY REASON I EVER ASKED THAT OTHER WITNESS WITH  
19 REGARD TO THE OTHER QUESTION IS HIS QUESTION. THIS  
20 QUESTION WAS ASKED BY MY BROTHER ON DIRECT, 'HAVE YOU  
21 SEEN ANY EVIDENCE THAT THE PATENT EXAMINER CONSIDERED  
22 PRIOR ART NOT LISTED ON THE FACE OF THE PATENT.' I  
23 MEAN, SO THAT'S THE ONLY REASON I EVER WENT INTO IT,  
24 BECAUSE HE ASKED CROFT AND CROFT SAID NO.

25 THE COURT: WELL, THERE HAS BEEN A VERY

1 MISLEADING IMPRESSION CREATED WITH THE JURY THAT THE  
2 EXAMINER CONSIDERED THE SPELLCHECKER TECHNOLOGY AND --

3 MR. HAYES: I UNDERSTAND YOUR CONCERN. I DON'T  
4 HAVE ANY PROBLEM WITH HIM ASKING QUESTIONS TO THAT  
5 EFFECT, BUT THAT CERTAINLY DOESN'T OPEN THE DOOR TO  
6 FILE WRAPPER ESTOPPEL, WHICH DOESN'T EVEN APPLY BECAUSE  
7 LITERAL INFRINGEMENT OR CLAIM CONSTRUCTION, WHICH  
8 YOU'RE GOING TO DO.

9 THE COURT: AGAIN, THE BENCHMARK, AS FAR AS I'M  
10 CONCERNED, IS ANYTHING THAT HE HAS TESTIFIED ABOUT TO  
11 WHICH PROSECUTION HISTORY IS RELEVANT, I'LL CERTAINLY  
12 ALLOW THAT; ANYTHING THAT HE HASN'T TESTIFIED ABOUT, I  
13 WON'T ALLOW. AND WE SEEM TO HAVE A LITTLE BIT OF A  
14 PROBLEM HERE IN GETTING HIM TO ACKNOWLEDGE WHAT HE DID  
15 OR DIDN'T TESTIFY ABOUT. AND THAT'S -- YOU'LL HAVE TO  
16 SOLVE THAT IN ANOTHER WAY.

17 MR. HAYES: HE DID NOT TESTIFY ABOUT PANDIT.  
18 AND THAT'S WHAT HE IS TRYING TO DO, YOUR HONOR.

19 THE COURT: WELL, NOT ENTIRELY, PANDIT IS PART  
20 OF PRIOR ART AND I THINK FRANK IS PERFECTLY WITHIN HIS  
21 RIGHTS TO QUESTION HIM ABOUT THE COMPARISON OF PANDIT  
22 TO THIS PATENT. I DON'T THINK THERE IS ANYTHING  
23 IMPROPER ABOUT THAT, DO YOU?

24 MR. HAYES: THEY ARE NOT ALLEGING PRIOR ART, A  
25 PIECE OF PRIOR ART THAT ANTICIPATES THE INVENTION,

1        THAT'S THE WHOLE PROBLEM.

2                THE COURT:  I DON'T KNOW WHAT THEY ARE GOING TO  
3        DO.

4                MR. HAYES:  THEY'RE NOT ALLEGING THAT PANDIT IS  
5        EVEN A PIECE OF PRIOR ART FOR THE PURPOSES OF THIS  
6        CASE.

7                THE COURT:  IS THAT RIGHT?

8                MR. SCHERKENBACH:  WE ARE NOT RELYING ON PANDIT.  
9        IN FACT, I'LL PASS OVER THAT.  I UNDERSTAND WHAT YOUR  
10       RULING IS.

11               MR. HAYES:  THANK YOU, JUDGE.

12               (END OF BENCH CONFERENCE)

13       Q.  OKAY.  SORRY FOR THE DELAY.  I WANT TO TALK ABOUT  
14       THE WORDPERFECT SPELLCHECKER, OKAY?

15       A.  SURE.

16       Q.  YOU DON'T DISPUTE THAT THE WORDPERFECT SPELLCHECKER  
17       IS PRIOR ART TO ARENDI'S PATENT; TRUE?

18       A.  THAT'S RIGHT, IT EXISTED BEFORE THE PATENT.

19       Q.  AND YOU ALSO DON'T DISPUTE THAT THE WORDPERFECT  
20       PRODUCT OR DOCUMENTATION ABOUT THE WORDPERFECT PRODUCT  
21       IS NOT CITED ON THE FACE OF THE PATENT AS SOMETHING THE  
22       EXAMINER CONSIDERED, RIGHT?

23       A.  RIGHT.

24       Q.  NOW, YOU DISTINGUISH THE WORDPERFECT SPELLCHECK  
25       FEATURE FROM THE PATENT IN PART BECAUSE SPELLCHECK IS

1 PART OF WORDPERFECT, IS THAT RIGHT?

2 A. YES.

3 Q. AND I BELIEVE YOU SAID YOU UNDERSTAND CLAIM 1 TO

4 REQUIRE THAT THE RECORD RETRIEVAL PROGRAM BE SEPARATE

5 FROM THE APPLICATION PROGRAM, IS THAT RIGHT?

6 A. THAT'S RIGHT.

7 Q. CLAIM 1 DOESN'T USE THE WORD "SEPARATE," DOES IT?

8 A. NO.

9 Q. NOW, YOU ALSO, I BELIEVE, DISTINGUISHED THE

10 SPELLCHECK PROGRAM FROM THE ARENDI PATENT BY SAYING, IN

11 SUBSTANCE, LOOKING AT EVERY WORD IN THE DOCUMENT IS NOT

12 ANALYSIS, IS THAT YOUR OPINION?

13 A. IF THAT'S ALL THAT'S HAPPENING, THAT'S RIGHT.

14 Q. BUT YOU AGREE THE ARENDI PATENT DOESN'T SAY THAT

15 YOU CAN'T ANALYZE A DOCUMENT BY LOOKING AT EVERY WORD

16 IN THE DOCUMENT, DOES IT?

17 A. I AGREE WITH YOU.

18 Q. IN FACT, YOU'VE SAID THAT THE ANALYSIS CALLED FOR

19 IN THE ARENDI PATENT CAN INCLUDE COMPARING EVERY WORD

20 IN THE DOCUMENT TO A PREDEFINED WORD, RIGHT?

21 A. IT CAN, YES.

22 Q. AND YOU ALSO SAID SOMETHING ON DIRECT ABOUT

23 DETERMINING THE MEANING OF WORDS AS BEING REQUIRED FOR

24 ANALYSIS TO OCCUR, IS THAT RIGHT?

25 A. NO. I WAS DESCRIBING THE ARENDI INVENTIONS.

1 Q. BUT YOU'LL AGREE WITH ME THAT THERE IS NOTHING IN  
2 THE PATENT ABOUT SPECIFICALLY DETERMINING THE MEANING  
3 OF WORDS AS SOMEHOW BEING REQUIRED AS PART OF THE  
4 ANALYSIS, RIGHT?

5 A. I AGREE WITH YOU.

6 Q. NOW, QUICKCORRECT, YOU DON'T DISPUTE THAT  
7 QUICKCORRECT IS PRIOR ART ALSO; TRUE?

8 A. TRUE.

9 Q. AND AGAIN, TO THE EXTENT QUICKCORRECT IS A COMPARE  
10 OF EVERY WORD IN THE DOCUMENT TO SOME OTHER PREDEFINED  
11 WORD, YOU'RE NOT SAYING THAT THAT IS NOT ANALYSIS  
12 WITHIN THE MEANING OF THE PATENT; TRUE?

13 A. CAN I HEAR THE QUESTION AGAIN, SIR?

14 Q. LET ME REPHRASE IT. COMPARING EVERY WORD IN A  
15 DOCUMENT TO A PREDEFINED WORD COULD QUALIFY AS ANALYSIS  
16 WITHIN THE MEANING OF THE PATENT, RIGHT?

17 A. I DON'T AGREE.

18 Q. WAS THAT A YES OR A NO?

19 A. NO, I DON'T AGREE WITH YOU.

20 Q. ALL RIGHT. DO YOU HAVE A COPY OF YOUR DEPOSITION  
21 UP THERE, SIR?

22 A. NO.

23 Q. WE'LL PROVIDE YOU ONE.

24 IF YOU COULD TURN, MR. KLAUSNER, THIS IS IN THE  
25 SECOND DAY OF YOUR DEPOSITION, PAGE 498, BEGINNING AT

1 LINE 17.

2 A. I HAVE IT.

3 Q. I BELIEVE IT'S LINE 10, I APOLOGIZE, I HAVE THE  
4 WRONG CITATION, LINE 10. IS IT CORRECT YOU WERE ASKED  
5 THE FOLLOWING QUESTION AND GAVE THE FOLLOWING ANSWER.

6 "AND DOES THE '853 PATENT SAY THAT YOU CAN'T  
7 ANALYZE USING A BRUTE-FORCE APPROACH TO FINDING  
8 INFORMATION? ANSWER: IT DOES NOT SAY SO."

9 MR. FEHER: FAIR READING, YOUR HONOR.

10 MR. SCHERKENBACH: CAN I GET THE ANSWER WHETHER  
11 THAT WAS YOUR TESTIMONY, FIRST.

12 A. YES.

13 MR. FEHER: FAIR READING, YOUR HONOR.

14 THE COURT: IS THERE ANOTHER PORTION YOU THINK  
15 SHOULD BE READ AT THIS TIME?

16 MR. FEHER: YES, YOUR HONOR. BEGINNING AT LINE

17 --

18 THE COURT: WHY DON'T YOU FIRST DISCUSS IT WITH  
19 MR. SCHERKENBACH AND SEE IF HE AGREES, AND IF NOT I'LL

20 --

21 MR. FEHER: LINE 15 TO 19.

22 MR. SCHERKENBACH: YES, SURE.

23 MR. FEHER: "BUT THE ANALYSIS, AS THE CLAIMS  
24 SAY, HAS TO BE TO DETERMINE IF THE FIRST INFORMATION IS  
25 CONTAINED THEREIN AND THEN SUBSEQUENTLY HAS SECOND

1 INFORMATION ASSOCIATED WITH IT, SO THAT THERE IS NO  
2 LIMITATION ABOUT BRUTE FORCE IN THE PATENT."

3 Q. SO THERE IS NO LIMITATION ABOUT WHAT YOU TERM  
4 BRUTE-FORCE ANALYSIS IN THE PATENT, RIGHT?

5 A. RIGHT.

6 Q. SO TOO MUCH ANALYSIS DOESN'T MEAN IT'S NOT ANALYSIS  
7 WITHIN THE MEANING OF THE PATENT; TRUE?

8 A. WELL, AS -- IT SAYS THAT IT HAS TO BE FOR THE  
9 PURPOSES OF FINDING FIRST INFORMATION. JUST ANALYZING  
10 DOESN'T NECESSARILY DO ANYTHING.

11 Q. LET'S TALK ABOUT THE IBM PATENT. YOU DON'T DISPUTE  
12 THAT THE IBM PATENT IS PRIOR ART TO THE ARENDI PATENT,  
13 RIGHT?

14 A. RIGHT.

15 Q. AND YOU DON'T DISPUTE THAT THE CONFUSABLE WORDS  
16 THAT ARE FOUND BY THE IBM PATENT ARE FIRST INFORMATION  
17 WITHIN THE MEANING OF THE PATENT; TRUE?

18 A. I DISPUTE THAT.

19 Q. ALL RIGHT, LOOK IN YOUR DEPOSITION, PLEASE, AGAIN,  
20 DAY TWO, PAGE 570. BEGINNING AT LINE 22 AND THIS WILL  
21 RUN OVER TO PAGE 571, LINE 2. IS IT CORRECT THAT YOU  
22 WERE ASKED THE FOLLOWING QUESTION AND GAVE THE  
23 FOLLOWING ANSWER:

24 "QUESTION: DO YOU DISPUTE IN YOUR EXPERT REPORT  
25 THAT THE CONFUSABLE WORDS FOUND BY THE LANG PATENT



1 INVENTION ARE, QUOTE, 'FIRST INFORMATION,' CLOSE QUOTE?

2 ANSWER: I DON'T DISPUTE IN THE REPORT THAT THE  
3 CONFUSABLE WORDS ARE, QUOTE, 'FIRST INFORMATION,'"  
4 CLOSE QUOTE.

5 THAT WAS YOUR TESTIMONY, RIGHT?

6 A. THAT'S CORRECT.

7 Q. NOW, YOU ALSO DON'T DISPUTE THAT THE IBM PATENT  
8 SPECIFICALLY DISCUSSES USING EITHER A MENU ITEM OR A  
9 KEY BUTTON TO INITIATE A SEARCH OF THE DOCUMENT, DO  
10 YOU?

11 A. I AGREE WITH YOU.

12 Q. AND THE PATENT CLEARLY DISCLOSES FINDING THESE  
13 CONFUSABLE WORDS AND THEN PRESENTING DEFINITIONS FOR  
14 THEM TO THE USER, RIGHT?

15 A. IT DOES.

16 Q. AND IT ALSO SHOWS IN TABLE 7, A PROGRAM THAT TALKS  
17 ABOUT OBTAINING AND RETRIEVING RECORDS, RIGHT?

18 A. CAN I SEE TABLE 7, SIR?

19 MR. SCHERKENBACH: IT SHOULD BE ON YOUR SCREEN  
20 AND BLOWN UP. AND YOUR HONOR, WITH YOUR PERMISSION IF  
21 WE CAN SHOW THIS TO THE JURY. IT IS IN EVIDENCE.

22 Q. MR. KLAUSNER, I CAN SPEED IT UP. IF YOU LOOK AT  
23 LINE 13, DO YOU SEE WHERE IT SAYS "OBTAIN RELATIVE  
24 RECORD ADDRESS"?

25 A. YES, I SEE IT.

1 Q. AND ABOUT LINE 17 OR 18 IT SAYS, "READ NEXT  
2 RECORD," AND SO FORTH?

3 A. YES, I SEE IT.

4 Q. SO YOU DON'T DISPUTE THAT THE IBM PATENT FAIRLY  
5 READ, DISCLOSES A RECORD RETRIEVAL PROGRAM, DO YOU?

6 A. YES, I DO DISPUTE THAT.

7 Q. YOU DO?

8 A. YES.

9 Q. ALL RIGHT. LET'S TALK ABOUT ADDRESSMATE. BY THE  
10 WAY, CAN YOU DESCRIBE FOR ME THE MATERIALS THAT YOU  
11 BROUGHT UP WITH YOU ON DIRECT, THERE WAS A YELLOW PAD  
12 AND SOME OTHER DOCUMENTS?

13 A. YES. I DIDN'T USE THE OTHER MATERIALS. THESE ARE  
14 THE MATERIALS I USED.

15 Q. AND THAT'S YOUR ANNOTATED COPY OF THE PATENT?

16 A. RIGHT, THE ONE I SHOWED THE JURY THE OTHER DAY.

17 Q. WHAT ELSE DO YOU HAVE THERE?

18 A. I HAVE THREE SHEETS WITH RESPECT TO THE PRIOR ART.

19 Q. WHAT ARE THEY? JUST DESCRIBE THEM FOR ME, PLEASE.

20 A. THE FIRST ONE IS WITH RESPECT TO ADDRESSMATE  
21 COMBINED WITH MICROSOFT WORD. THE SECOND ONE IS WITH  
22 RESPECT TO CLARIS EMAILER COMBINED WITH THE APPLE DATA  
23 DETECTORS, AND THE THIRD IS WITH RESPECT TO THE  
24 SPELLCHECKERS.

25 Q. WOULD YOU MIND IF I JUST TOOK A QUICK LOOK AT

1       THOSE?

2       A.   PLEASE.

3               MR. SCHERKENBACH:   YOUR HONOR, MAY I?

4               THE COURT:   YES.

5       Q.   DID YOU CREATE THESE?

6       A.   YES.

7               MR. SCHERKENBACH:   CAN I HAVE THE ELMO.

8       Q.   SO THESE ARE SORT OF CHEAT SHEETS OF YOUR TESTIMONY

9       ON THESE VARIOUS PIECES OF PRIOR ART?

10              MR. FEHER:   OBJECTION, YOUR HONOR.

11              THE COURT:   SUSTAINED.

12       Q.   WELL, FOR WHAT PURPOSE, MR. KLAUSNER, DO YOU USE

13       THESE THREE PAGES OF NOTES THAT YOU CREATED?

14       A.   FOR EXACTLY THE PURPOSE YOU ARE USING THEM NOW, TO

15       SHOW IT TO THE JURY.

16       Q.   WELL, YOU DIDN'T SHOW THESE TO THE JURY, DID YOU?

17       A.   IT TURNS OUT I DIDN'T NEED THEM TO BE SHOWN TO THE

18       JURY.

19       Q.   BUT YOU HAD THEM WITH YOU WHILE YOU WERE

20       TESTIFYING, RIGHT?

21       A.   THAT'S RIGHT.

22       Q.   HOW ABOUT THAT YELLOW PAD.   DO YOU HAVE THAT UP

23       THERE?

24       A.   I HAVE IT.

25       Q.   WHAT'S ON THAT?

1       A.  THESE ARE NOTES ON THE TESTIMONY THAT WAS PRESENTED  
2       IN COURT OVER THE LAST SEVERAL DAYS.

3       Q.  SO AS YOU WERE SITTING IN THE BACK, SORT OF JOTTING  
4       THINGS DOWN?

5       A.  YES.

6       Q.  DID YOU REFER TO THAT AT ALL WHILE YOU WERE  
7       TESTIFYING?

8       A.  NO, I DIDN'T REFER TO THE OTHER MATERIALS.

9       Q.  LET'S GO ON TO ADDRESSMATE.  YOU DON'T DISPUTE THAT  
10      ADDRESSMATE PLUS IS PRIOR ART, RIGHT?

11      A.  RIGHT.

12      Q.  IS IT TRUE THAT -- YOU MENTIONED FOR APPLE DATA  
13      DETECTORS THAT LAST NIGHT WAS THE FIRST TIME YOU EVER  
14      USED THE PRODUCT; TRUE?

15      A.  THAT'S RIGHT.

16      Q.  SO YOU WROTE YOUR EXPERT REPORT IN THIS CASE ON  
17      INVALIDITY BEFORE YOU HAD EVER USED APPLE DATA  
18      DETECTORS; TRUE?

19      A.  THAT'S CORRECT.

20      Q.  AND BY THE WAY, LAST NIGHT YOU ACTUALLY USED IT  
21      OVER AT OUR SORT OF WAR ROOM, RIGHT, YOU CAME OVER AND  
22      USED OUR COMPUTERS THAT HAD THE SOFTWARE ON IT?

23      A.  RIGHT.  I LOOKED AT THE SOFTWARE TO SEE IF IT  
24      CORROBORATED ALL OF THE MATERIALS I READ ABOUT APPLE  
25      DATA DETECTORS OVER THE LAST YEAR.

1 Q. ISN'T IT ALSO TRUE THAT LAST NIGHT WAS THE FIRST  
2 TIME YOU HAD EVER USED ADDRESSMATE WITH THE ZIP+4 CD  
3 TOGETHER?

4 A. THAT'S CORRECT. I NEVER GOT THE ZIP+4 CD.

5 Q. SO YOU WROTE YOUR EXPERT REPORT ON ADDRESSMATE ALSO  
6 BEFORE YOU HAD USED THE PRODUCT WITH THE ZIP+4 CD?

7 A. THAT'S CORRECT.

8 Q. ONE OF THE -- YOU WERE HERE WHEN MR. BLOCK TALKED  
9 ABOUT ADDRESSMATE, RIGHT?

10 A. YES.

11 Q. AND HE TALKED ABOUT AT LEAST THREE DIFFERENT  
12 FEATURES OF ADDRESSMATE, DO YOU RECALL THAT?

13 A. YES.

14 Q. SO ONE WAS SAVE ADDRESS, RIGHT?

15 A. YES.

16 Q. ONE WAS CHECK AND CORRECT ADDRESS, RIGHT?

17 A. YES.

18 Q. AND ANOTHER WAS RETRIEVE ADDRESS, DO YOU RECALL  
19 THAT?

20 A. YES.

21 Q. NOW, IN YOUR DIRECT TESTIMONY HERE TODAY YOU DIDN'T  
22 SAY ANYTHING ABOUT RETRIEVE ADDRESS, DID YOU?

23 A. I DON'T THINK I DID.

24 Q. AND YOUR EXPERT REPORT IN THIS CASE DOESN'T SAY  
25 ANYTHING ABOUT RETRIEVE ADDRESS EITHER, DOES IT?

1 A. I DON'T RECALL. I'D HAVE TO SEE IT.

2 Q. YOU DON'T RECALL AS YOU STAND THERE TODAY; TRUE?

3 A. THAT'S TRUE.

4 Q. NOW, YOU DO REMEMBER THAT FIGURES 3 AND 4 OF

5 MR. HEDLOY'S PATENT BASICALLY SHOW A RETRIEVE ADDRESS

6 EXAMPLE, RIGHT?

7 A. FIGURES 3 AND 4?

8 Q. I'LL PUT IT UP ON THE ELMO TO HELP YOU. YOU

9 RECOGNIZE FIGURE 3, RIGHT?

10 A. YES.

11 Q. USER TYPES A NAME; CORRECT?

12 A. THAT'S CORRECT.

13 Q. THAT'S ONE OF THE THINGS THAT'S DEPICTED HERE IS

14 THE USER HAS TYPED THIS NAME, ATLE HEDLOY; TRUE?

15 A. THAT'S CORRECT.

16 Q. AND THE NEXT THING THAT'S GOING TO HAPPEN IS THE

17 USER IS GOING TO HIT THIS ONE BUTTON -- THE BUTTON

18 THERE ON THE MENU BAR, RIGHT?

19 A. RIGHT.

20 Q. BY THE WAY, BEFORE WE LEAVE THIS, YOU WERE TALKING

21 ABOUT HOW SOME OF OUR PRIOR ART WAS A COMBINATION OF

22 OTHER PROGRAMS AND MICROSOFT WORD, DO YOU RECALL THAT?

23 A. THAT'S CORRECT.

24 Q. YOU DISTINGUISHED ADDRESSMATE AND APPLE DATA

25 DETECTORS BOTH ON THAT BASIS, DIDN'T YOU?

1     A.   YES, I DID.

2     Q.   WELL, THE EXAMPLE IN THE PATENT IS A COMBINATION OF

3     THE ONE BUTTON PROGRAM AND MICROSOFT WORD, ISN'T IT?

4     A.   ABSOLUTELY. I THINK -- I WOULD LIKE YOU TO

5     UNDERSTAND THAT FOR THE PURPOSES OF DISTINGUISHING THE

6     PRIOR ART, THE PRIOR ART CANNOT BE A COMBINATION. THE

7     PATENT CAN.

8     Q.   OH.

9     A.   FOR ANTICIPATION PURPOSES, THE PRIOR ART CANNOT BE

10    A COMBINATION IS MY UNDERSTANDING.

11    Q.   SO THE DISCLOSURE THAT SUPPORTS THE CLAIMS CAN BE

12    THIS COMBINATION, BUT PRIOR ART THAT WOULD ANTICIPATE

13    THE CLAIMS OTHERWISE CAN'T BE THE SAME THING, THAT'S

14    YOUR UNDERSTANDING?

15    A.   THAT'S RIGHT.

16    Q.   OKAY. WELL, SO IN FIGURE 3, THE PERSON'S NAME HAS

17    BEEN TYPED AND THEY ARE ABOUT TO HIT THE BUTTON, RIGHT?

18    A.   CORRECT.

19    Q.   AND THEN IN FIGURE 4, THEY HIT THE BUTTON AND THE

20    ADDRESS HAS BEEN INSERTED, RIGHT?

21    A.   THE ADDRESS WAS INSERTED FROM ADDRESSMATE INTO THE

22    WORD DOCUMENT; CORRECT.

23    Q.   WELL, ACTUALLY THIS IS THE PATENT, THERE IS NO

24    ADDRESSMATE HERE.

25    A.   OH, I'M SORRY, YOU ARE CORRECT. THE ADDRESS WAS

1       INSERTED.

2       Q.   WE'RE GOING TO LOOK AT ADDRESSMATE.

3       A.   GOOD.

4       Q.   ALL RIGHT.  SO WE SCREEN CAPTURED, TOOK PICTURES OF

5       MR. BLOCK'S RETRIEVE ADDRESS EXAMPLE.  SO DO YOU

6       RECOGNIZE THIS SCREEN SHOT, THIS IS HIS FIRST EXAMPLE

7       WHERE HE TYPED IN JIM BEST?

8       A.   YES.

9       Q.   AND JUST LIKE THE PATENT, IT'S A MICROSOFT WORD

10      DOCUMENT AND IT HAS AN ADDED ICON UP THERE, IN THIS

11      CASE IT IS AMATE INSTEAD OF ONE BUTTON, RIGHT?

12      A.   CORRECT.

13      Q.   LET'S GO BACK AND FORTH, MAYBE WE CAN DO A SPLIT

14      SCREEN HERE.  IN THE PATENT IT IS ATLE HEDLOY IN OUR

15      EXAMPLE, FROM ADDRESSMATE IT'S JIM BEST, RIGHT?

16      A.   CORRECT.

17      Q.   AND IN THE PATENT IT'S CALLED A ONE BUTTON BUTTON

18      AND FOR ADDRESSMATE IT'S JUST CALLED AMATE, RIGHT?

19      A.   CORRECT.

20      Q.   NOW, THE NEXT THING THAT HAPPENS WITH ADDRESSMATE

21      IN MR. BLOCK'S DEMONSTRATIONS IS THE USER IS GOING TO

22      CLICK ON, DID CLICK ON THE RETRIEVE ADDRESS MENU ITEM,

23      RIGHT?

24      A.   CORRECT.

25      Q.   AND WHAT HAPPENED NEXT, DO YOU REMEMBER?



1     A.   YES.   IT LEAVES THE MICROSOFT WORD DOCUMENT, IT  
2     COPIES THE TEXT OFF SOMEWHERE ELSE INTO MEMORY AND THE  
3     MICROSOFT WORD DOCUMENT DOES NO ANALYSIS.

4     Q.   WELL, FROM THE USER'S PERSPECTIVE ANYWAY --

5     A.   UNDER THE COVERS --

6     Q.   -- TELL US WHAT HAPPENS.

7     A.   I'M SORRY.  YOU ASKED ME WHAT HAPPENS AND I  
8     DESCRIBED WHAT HAPPENS.  THE MICROSOFT WORD DOCUMENT IS  
9     NOT INVOLVED IN ANY OF THE STEPS THAT FOLLOW THAT CLICK  
10    IN THIS EXAMPLE, OR, IN FACT, WITH ADDRESSMATE AT ALL.

11    Q.   DO YOU SEE THE SCREEN SHOT I HAVE ON THE ELMO NOW?

12    A.   YES.

13    Q.   THAT IS, IN FACT, WHAT HAPPENED IN MR. BLOCK'S  
14    DEMONSTRATION AFTER HE CLICKED ON THE RETRIEVE ADDRESS  
15    MENU ITEM; TRUE?

16    A.   ADDRESSMATE WENT BACK TO WORD AND INSERTED THE  
17    ADDRESS.

18    Q.   IT INSERTED THE ADDRESS IN THE WORD DOCUMENT;  
19    RIGHT?

20    A.   INTO THE WORD DOCUMENT, CORRECT.

21    Q.   AND SO IF WE DO A LITTLE SPLIT SCREEN HERE WITH THE  
22    PATENT, AND, AGAIN, I'LL HIGHLIGHT THE RELEVANT PARTS,  
23    IN THE PATENT THE ADDRESS GOT INSERTED BY HITTING THE  
24    ONE BUTTON, RIGHT?

25    A.   YES.

1 Q. AND IN ADDRESSMATE THE ADDRESS GOT INSERTED BY  
2 HITTING THE AMATE -- THE SELECTION ON THE AMATE MENU;  
3 TRUE?  
4 A. THAT'S CORRECT.  
5 Q. NOW, DID YOU SAY ADDRESSMATE DOESN'T HAVE A RECORD  
6 RETRIEVAL PROGRAM?  
7 A. I THINK ADDRESSMATE DOES DO RECORD RETRIEVAL.  
8 ADDRESSMATE ITSELF IS A RECORD RETRIEVAL PROGRAM.  
9 Q. OKAY. AND YOU AGREE, THEN, THAT TO FIND AN ADDRESS  
10 THAT CORRESPONDS TO THE NAME THAT'S BEEN TYPED, SO JIM  
11 BEST, ADDRESSMATE HAS TO KNOW WHAT THE NAME IS, RIGHT?  
12 A. YES, ADDRESSMATE TAKES THE NAME AWAY FROM MICROSOFT  
13 WORD INTO ITS OWN AREA, AND WORKS WITH THE NAME.  
14 Q. RIGHT. SO ADDRESSMATE, TO GO BACK TO THE ELMO  
15 HERE, ADDRESSMATE HAS TO ANALYZE WHAT THE USER HAS  
16 TYPED HERE TO KNOW THAT THE USER HAS TYPED THE NAME JIM  
17 BEST, RIGHT?  
18 A. YEAH, I THINK THAT'S A FAIR STATEMENT. ADDRESSMATE  
19 LOOKS AT THAT NAME, YEAH.  
20 Q. AND THEN AFTER ADDRESSMATE FIGURES OUT WHAT THE  
21 USER HAS TYPED, THAT'S HOW IT KNOWS WHAT ADDRESS TO  
22 RETRIEVE FROM THE DATABASE; TRUE?  
23 A. WELL, ADDRESSMATE ITSELF RETRIEVES IT, IT DOESN'T  
24 USE ANOTHER PROGRAM. IS THAT -- WELL, THAT'S THE END  
25 OF MY ANSWER.

1 Q. BUT APART FROM THE SEPARATE PROGRAM POINT, WHETHER  
2 IT'S ADDRESSMATE OR ANOTHER PROGRAM, THE ADDRESS FOR  
3 JIM BEST CANNOT BE RETRIEVED UNTIL THE PROGRAM HAS  
4 ANALYZED THE DOCUMENT TO KNOW THAT JIM BEST IS THE NAME  
5 FOR WHICH IT IS SEARCHING FOR THE ADDRESS, RIGHT?

6 A. NO.

7 Q. SO THE PROGRAM CAN -- KNOWS THE RIGHT ADDRESS TO  
8 PUT IN FOR JIM BEST WITHOUT KNOWING THAT JIM BEST HAS  
9 BEEN TYPED THERE?

10 A. YOU KEEP SAYING THE PROGRAM. WHICH PROGRAM ARE YOU  
11 TALKING ABOUT, WORD OR ADDRESSMATE?

12 Q. ADDRESSMATE.

13 A. ADDRESSMATE DOESN'T HAVE A DOCUMENT.

14 Q. DOESN'T HAVE A DOCUMENT?

15 A. IT'S NOT WITHIN A DOCUMENT.

16 Q. WELL, WE'RE LOOKING AT A DOCUMENT HERE IN THE ELMO,  
17 RIGHT?

18 A. WE ARE LOOKING AT MICROSOFT WORD HERE ON THE ELMO.

19 Q. OKAY. JUST LIKE IN THE PATENT WE'RE LOOKING AT  
20 MICROSOFT WORD IN FIGURE 3; CORRECT?

21 MR. FEHER: OBJECTION, HE IS COMPARING TO THE  
22 PREFERRED EMBODIMENT, YOUR HONOR.

23 THE COURT: OVERRULED.

24 A. THE PATENT DOES SHOW THAT, CORRECT.

25 Q. NOW, YOU TESTIFIED IN YOUR DEPOSITION IN THIS CASE

1        THAT IN THE PATENT --

2                MR. FEHER:  OBJECTION, YOUR HONOR.

3                THE COURT:  I DON'T THINK HE HAS FINISHED THE  
4        QUESTION.  FIRST OF ALL, MR. SCHERKENBACH, IT DOESN'T  
5        SOUND LIKE IT'S PROPER USE OF A DEPOSITION.

6                MR. SCHERKENBACH:  I'LL REPHRASE.

7                THE COURT:  OF COURSE WE HAVE BEEN DOING IT  
8        THROUGHOUT THE TRIAL ANYWAY, SO I DON'T KNOW IF WE  
9        SHOULD START NOW USING DEPOSITIONS PROPERLY, BUT THERE  
10       WAS AN OBJECTION.

11               MR. SCHERKENBACH:  I'LL REPHRASE, THANK YOU,  
12       YOUR HONOR.

13        Q.  YOU AGREE THAT IN THE EXAMPLES PROVIDED IN THE  
14        PATENT, THAT THERE ARE TWO PROGRAMS INVOLVED, AT LEAST  
15        TWO PROGRAMS INVOLVED, RIGHT?

16        A.  YES.

17        Q.  THERE IS THE ONE BUTTON PROGRAM, RIGHT?

18        A.  RIGHT.

19        Q.  AND A WORD PROCESSOR, LIKE MICROSOFT WORD, RIGHT?

20        A.  YES.

21        Q.  NOW, THE CLAIMS OF THE PATENT THOUGH, DON'T REQUIRE  
22        SPECIFICALLY THAT ONE OF THE PROGRAMS INVOLVED HAS TO  
23        BE A WORD PROCESSOR; TRUE?

24        A.  I DON'T THINK THAT THAT'S TRUE.

25        Q.  WELL, IF YOU LOOK AT CLAIM 1, AND I'LL PUT THAT UP

1 FOR YOU, YOU DON'T FIND THE WORDS, "WORD PROCESSOR," IN  
2 CLAIM 1 ANYWHERE, RIGHT?

3 A. THOSE WORDS LITERALLY ARE NOT THERE, IT SAYS  
4 APPLICATION PROGRAM.

5 Q. AN APPLICATION PROGRAM, RIGHT?

6 A. RIGHT.

7 Q. AND LIKEWISE, IF YOU LOOK AT THE ANALYZING STEP?

8 A. YES.

9 Q. THE PATENT DOESN'T SAY THAT THE ANALYZING STEP HAS  
10 TO BE CARRIED OUT BY OR IN A WORD PROCESSOR, RIGHT.

11 A. I AM GOING TO POINT YOU TO THE PATENT, AS YOU SAY,  
12 COLUMN 4, LINE 25 IT SAYS, AT STEP 6 THE PROGRAM  
13 DECIDES WHAT WAS FOUND IN THE DOCUMENT.

14 AND THE PROGRAM IS THE APPLICATION PROGRAM  
15 THAT'S FOUND RIGHT THERE.

16 Q. I'M SORRY. CAN YOU JUT POINT ME AGAIN TO WHERE YOU  
17 WERE, I MISSED IT?

18 A. WELL, ON COLUMN 4, LINE 25 IT SAYS THE PROGRAM  
19 DECIDES WHAT WAS FOUND IN THE DOCUMENT, AND THE PROGRAM  
20 IS THE APPLICATION PROGRAM THAT I'VE PURPLE ENCIRCLED.  
21 AND THE APPLICATION PROGRAM IS ALSO DESCRIBED IN  
22 COLUMNS 1 AND IN COLUMNS 9 AS A WORD PROCESSOR SUCH AS  
23 MICROSOFT WORD.

24 Q. SO IT'S YOUR TESTIMONY THAT IN THE PATENT, I AM  
25 GOING TO PUT UP THE FIGURE 1-A, IN THE PATENT THE

1       PROGRAM THAT DOES THE ANALYSIS OF WHAT THE USER TYPES  
2       IS MICROSOFT WORD, THE WORD PROCESSOR?

3       A.   CORRECT.

4       Q.   IT'S NOT THE ONE BUTTON INVENTION OR THE ONE BUTTON  
5       PROGRAM AS DISCLOSED AS THE INVENTION THAT DOES THE  
6       ANALYSIS OF WHAT THE USER TYPES?

7       A.   YOU'RE TALKING ABOUT THE PATENT, SO YOU ARE TALKING  
8       ABOUT ALL OF THE EMBODIMENTS OF ALL OF THE INVENTIONS.  
9       IN THIS PARTICULAR EMBODIMENT THE ANALYSIS IS DONE BY  
10      ONE BUTTON.  BUT THE PATENT SPECIFICALLY CALLS OUT THAT  
11      THE PROGRAM DOES THE ANALYSIS.

12      Q.   LET'S LOOK A LITTLE MORE CLOSELY AT THAT PASSAGE  
13      YOU'RE RELYING ON.  IT SAYS -- IT REFERS IN THE  
14      SENTENCE PRIOR TO THE ONE YOU POINTED TO, TO THE USER  
15      INSERTING ADDRESS IN THE WORD PROCESSOR, RIGHT?

16      A.   CORRECT.

17      Q.   AND AFTER THAT HAPPENS, THE USER COMMANDS THE  
18      BUTTON THAT'S STEP 2, LET ME JUST STOP THERE.  THAT'S  
19      CLICKING ON IN ONE EXAMPLE THE ONE BUTTON; TRUE?

20      A.   TRUE.

21      Q.   AND THE PROGRAM ANALYZES WHAT THE USER HAS TYPED IN  
22      THE DOCUMENT AT STEP 4; CORRECT?

23      A.   CORRECT.

24      Q.   IT DOESN'T SAY THE WORD PROCESSOR AGAIN, IT SAYS  
25      THE PROGRAM, RIGHT?

- 1 A. CORRECT.
- 2 Q. EVEN THOUGH IT USED "WORD PROCESSOR" IMMEDIATELY  
3 ABOVE; RIGHT?
- 4 A. CORRECT.
- 5 Q. WE HAD SOME -- STRIKE THAT. WHEN YOU PREPARED YOUR  
6 EXPERT REPORTS IN THE PROCESS OF PREPARING YOUR  
7 REPORTS, HOW MANY TIMES DID YOU TALK WITH OR MEET WITH  
8 THE LAWYERS FROM MINTZ LEVIN BEFORE YOU FILED THE  
9 REPORTS, WOULD YOU SAY?
- 10 A. SOME NUMBER OF TIMES, I DON'T REMEMBER HOW MANY.
- 11 Q. CAN YOU ESTIMATE, EITHER THE NUMBER OF TIMES OR THE  
12 NUMBER OF HOURS?
- 13 A. PROBABLY AT LEAST TWO. AND THE NUMBER OF HOURS,  
14 PROBABLY -- WELL, CERTAINLY AROUND 100, I WOULD  
15 IMAGINE.
- 16 Q. OKAY. AND A HUNDRED HOURS?
- 17 A. YES, A LOT OF THE WORK WAS DONE REMOTELY.
- 18 Q. AND CAN YOU ESTIMATE FOR US THE TOTAL NUMBER OF  
19 HOURS THAT YOU'VE WORKED JUST ON THIS CASE?
- 20 A. THREE HUNDRED AND ELEVEN THROUGH THE END OF LAST  
21 MONTH.
- 22 Q. AND QUITE A FEW THIS MONTH, RIGHT?
- 23 A. YES.
- 24 Q. HOW MANY, BALLPARK?
- 25 A. I DON'T KNOW. I HAVE BEEN SITTING IN THE COURTROOM

1 DURING THE LENGTH OF THIS TRIAL.

2 Q. ANOTHER COUPLE HUNDRED, PROBABLY?

3 A. I DON'T KNOW.

4 Q. WELL, WHY DON'T YOU ESTIMATE FOR US, IF YOU CAN.

5 A. SURE. PROBABLY BETWEEN 100 AND 150.

6 Q. SO FAIR TO SAY YOU SPENT AT LEAST 400 HOURS ON THIS

7 CASE?

8 A. YES.

9 Q. AND WHAT'S YOUR RATE?

10 A. \$350 AN HOUR.

11 Q. SO WE'RE TALKING MORE THAN \$125,000 ON THIS CASE

12 ALONE, RIGHT?

13 A. THAT'S RIGHT.

14 MR. SCHERKENBACH: I DON'T HAVE ANY FURTHER

15 QUESTIONS, YOUR HONOR.

16 THE COURT: ANY REDIRECT, MR. FEHER?

17 REDIRECT EXAMINATION

18 BY MR. FEHER

19 Q. MR. KLAUSNER, WHAT IS YOUR -- MR. SCHERKENBACH

20 ASKED YOU ABOUT WHETHER YOU WERE ABLE TO REVIEW THE

21 ZIP+4 DATABASE PRIOR TO LAST NIGHT. WHAT IS YOUR

22 UNDERSTANDING OF THE REASON WHY YOU COULDN'T REVIEW THE

23 ZIP+4 DATABASE OF ADDRESSMATE PLUS PRIOR TO LAST NIGHT?

24 A. I UNDERSTOOD THAT MICROSOFT DIDN'T PROVIDE IT

25 BEFORE LAST NIGHT.



1 MR. FEHER: NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: YOU MAY STEP DOWN, MR. KLAUSNER.

3 THE WITNESS: THANK YOU, YOUR HONOR.

4 (WITNESS EXCUSED)

5 THE COURT: MR. HAYES, THE BALL IS IN YOUR  
6 COURT, I BELIEVE. DO YOU HAVE ANY FURTHER REBUTTAL ON  
7 THE INFRINGEMENT QUESTION?

8 MR. HAYES: NO, YOUR HONOR.

9 THE COURT: SO THE PLAINTIFF RESTS, THEN?

10 MR. HAYES: CORRECT.

11 THE COURT: MR. SCHERKENBACH, DO YOU HAVE ANY  
12 REBUTTAL ON THE ISSUE OF INVALIDITY?

13 MR. SCHERKENBACH: WE DO NOT, YOUR HONOR.

14 THE COURT: SO THE DEFENDANT RESTS?

15 MR. SCHERKENBACH: THE DEFENDANT RESTS.

16 THE COURT: NOW WE CAN ALL REST, LADIES AND  
17 GENTLEMEN. YOU'VE HEARD ALL THE EVIDENCE IN THE CASE.  
18 AS I TOLD YOU, THE ARGUMENTS FROM THE LAWYERS AND MY  
19 EXPLANATION TO YOU OF THE LAW, WHATEVER THERE IS LEFT  
20 TO EXPLAIN IN THE LAW, WILL BE GIVEN TO YOU EITHER  
21 MONDAY OR TUESDAY MORNING. WHAT YOU SHOULD DO IS  
22 SOMETIME AFTER 5:00 TOMORROW, CALL THE CODE-A-PHONE  
23 NUMBER THAT YOU MAY ALREADY HAVE OR IF YOU HAVEN'T, THE  
24 CLERK WILL GIVE IT TO YOU AND IT WILL LET YOU KNOW  
25 WHETHER YOU SHOULD REPORT MONDAY MORNING OR TUESDAY

1 MORNING.

2 I'LL PROBABLY ASK YOU TO COME IN EARLIER THAN  
3 USUAL SO WE HAVE A FULL DAY; YOU WILL BE ABLE TO HEAR  
4 THE ARGUMENTS, MY EXPLANATION OF THE LAW AND HAVE A  
5 LITTLE TIME FOR YOU TO AT LEAST BEGIN YOUR  
6 DELIBERATIONS. SO WE'LL PROBABLY GET STARTED AT 9:00  
7 ON WHATEVER DAY IT IS CHOSEN HERE. YOU GET A LONG  
8 WEEKEND. REMEMBER, THERE IS NO SESSION TOMORROW, AND  
9 CALL THE CODE-A-PHONE SOME TIME AFTER 5:00 TOMORROW FOR  
10 FURTHER INSTRUCTIONS. THANK YOU.

11 (JURY EXCUSED)

12 THE COURT: COURT WILL BE ADJOURNED. I WOULD  
13 LIKE TO SEE COUNSEL IN CHAMBERS.

14 (ADJOURNED 3:55 P.M.)

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1 C E R T I F I C A T I O N

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4 I, ANGELA M. GALLOGLY, RPR, DO HEREBY

5 CERTIFY THAT THE FOREGOING PAGES ARE A TRUE AND

6 ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE

7 ABOVE-ENTITLED CASE.

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12 ANGELA M. GALLOGLY, RPR

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